

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

-----x
MARY LALIBERTE, et al.,

Plaintiffs,

vs.

Case No.

4:22-cv-03290 (AHB)

QUANTA SERICES, INC., et al.,

Defendants.
-----x

REMOTE VIDEOTAPED DEPOSITION BY VIRTUAL ZOOM OF
ADAM WERNER
Monday, September 9, 2024

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Videotaped deposition of ADAM WERNER,
taken in Pismo Beach, California, commencing at
9:02 a.m., on Monday, September 9, 2024 before
LYNNE M. LEDANOIS, Certified Shorthand Reporter
No. 6811, Certified Court Reporter.

* * *

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Examination by:

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Mr. Blumenfeld

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Monday, September 9, 2024

9:02 a.m.

THE VIDEOGRAPHER: Good morning. We're
going on the record at 9:02 a.m. Pacific Daylight 0
Time on September 9th, 2024.

Please note that this deposition is being
conducted virtually.

Quality of the recording depends on the
quality of camera and internet connections of
participants. What is seen from the witness and
heard on screen is what will be recorded.

Audio and video recording will continue to
take place unless all parties agree to go off the
record.

This is Media Unit Number 1 of the
video-recorded deposition of Dr. Adam Werner taken
by counsel for defendants in the matter of Mary
Laliberte, et al., versus Quanta Services
Incorporated, et al., filed in the United States
District Court for the Southern District of Texas.
Case number 4:22-cv-03290 (AHB).

This deposition is being conducted
remotely using virtual technology.

My name is Brandon Miller, representing

1 Veritext Legal Solutions and I'm the videographer.
2 The court reporter is Lynne Ledanois from the firm
3 Veritext Legal Solutions.

4 I'm not related to any party in this
5 action, nor am I financially interested in the
6 outcome.

7 If there are any objections to proceeding,
8 please state them at the time of your appearance.

9 Counsel and all present, including
10 remotely, will now state their appearances and
11 affiliations for the record beginning with the
12 noticing attorney and the witness will be sworn in.
13 Thank you.

14 MR. BLUMENFELD: Good morning, everyone.
15 This is Jeremy Blumenfeld from Morgan Lewis on
16 behalf of the defendants.

17 We also have Sam Block, Keri Engelman and
18 Maria DeCastro on behalf of the defendants and
19 Carolyn Campbell on behalf of Quanta.

20 MR. TANG: Kolin Tang of Miller Shah here
21 on behalf of plaintiffs and Dr. Werner.

22
23 ADAM WERNER, Ph.D.,
24 having been duly sworn, testified as follows:

25 EXAMINATION

1 BY MR. BLUMENFELD:

2 Q Good morning, Dr. Werner. My name is
3 Jeremy Blumenfeld. We met a couple of minutes ago.
4 I'm one of the lawyers for the Quanta Service
5 defendants in connection with the ERISA class
6 action.

7 Do you understand that?

8 A I do.

9 Q Great. You've been deposed before?

10 A I have.

11 Q Approximately how many times?

12 A North of 50.

13 Q You know the drill. You know the rules.
14 The most important rule is you're under oath as if
15 you were testifying live in front of the judge or
16 jury. Do you understand that?

17 A I do.

18 Q Great. If there comes a point in time
19 during the course of the session today that you want
20 to take a break, just let me know, we'll find a good
21 place do that. Okay?

22 A Yes.

23 Q And if you don't hear my question or my
24 question is unclear to you, please let me know that
25 and I'll try and clarify it or repeat it.

1 Especially with technology that we're using today,
2 if you don't hear something because I cut out or the
3 video cuts out or what have you, we'll just repeat
4 the question and go from there. Sound good?

5 A Yes.

6 Q Great. Have you ever been deposed before
7 in any ERISA cases?

8 A Yes.

9 Q How many?

10 A One, to the best of my knowledge.

11 Q Is that the Genworth case?

12 A Correct.

13 Q Your report in that case was also about
14 damages?

15 A To the best of my recollection, yes.

16 Q How long ago was that?

17 A As I sit here, I don't recall. I'm happy to
18 look at my vitae. I believe that's Exhibit 1 to -- I
19 don't know that my report will be Exhibit 1 to this
20 deposition, but it's Exhibit 1 to my report. I can
21 use that to refresh my memory.

22 Q You don't remember as you sit here today
23 without looking at your report and your vitae
24 whether it was a year ago or five years ago or ten
25 years ago?

1 A So do you want me to answer each one of
2 those sequentially?

3 Q Sure.

4 A So it was not ten years ago. It was not
5 five years ago. It probably was within the last year.

6 I mean, if you want me to give vague
7 answers like, oh, I was deposed within the last
8 three years, so that encompasses my probability of
9 me not remembering with 100 percent accuracy, I'm
10 happy to do that.

11 Q Okay. I think what you said is you know
12 it's within the last three years, but -- and maybe
13 within the last year, but you're not 100 percent on
14 that; is that correct?

15 A That's correct.

16 Q Have you ever prepared any papers on
17 anything associated with ERISA?

18 A I don't understand --

19 THE WITNESS: Sorry, go ahead.

20 MR. TANG: Object to form. Go ahead.

21 THE WITNESS: I don't understand the
22 question.

23 BY MR. BLUMENFELD:

24 Q You are a professor?

25 A I was.

1 Q When you were a professor, did you publish
2 any papers?

3 A I've published papers, I don't believe I
4 published any papers while I was a professor. I think
5 technically I was a lecturer.

6 Q Have you published any papers that have
7 anything to do with ERISA?

8 A Not to my knowledge.

9 Q Okay. Have you given any presentations
10 that have anything to do with ERISA?

11 A Not that I recall.

12 MR. TANG: Just a form objection. Go
13 ahead, Dr. Werner.

14 BY MR. BLUMENFELD:

15 Q Dr. Werner, before you joined, I was
16 explaining to the court reporter that we have an
17 expert on our end also whose name is Dr. Wermers,
18 which is similar to yours, and so that's some of the
19 confusion you might hear.

20 If I do that during the course of the
21 session today, I apologize. I am a human being like
22 everybody else, but I just wanted to explain that to
23 you.

24 MR. TANG: Thank you, Jeremy.

25 MR. BLUMENFELD: Sure.

1 Q Are you also employed by SEDA, S-E-D-A?

2 A I don't think I'm technically employed by
3 them. I am a 1099, so -- but, I mean, if you want to
4 consider that under the umbrella of employment, I
5 guess the answer is yes.

6 Q How long have you been working for SEDA
7 and receiving 1099s?

8 A To give you the most accurate answer, I
9 would need to look at my vitae.

10 Q Can you give me an approximation?

11 A I believe more than a year, less than two
12 years.

13 Q Do you know how many people are employed
14 by SEDA in a similar relationship to the one that
15 you have with SEDA?

16 A I do not.

17 Q Do you know how many people are W2
18 employees of SEDA?

19 A I do not.

20 Q Do you have any approximation as to how
21 many people consider themselves in some form or
22 another to be employed by SEDA?

23 A No.

24 Q Do you know if there's anybody else who
25 works for SEDA in a similar capacity to what you do?

1 A Can you repeat the question, please?

2 MR. BLUMENFELD: Lynne, can you read that
3 back?

4 THE REPORTER: Sure.

5 (Requested testimony read by the reporter.)

6 THE WITNESS: When you say "similar
7 capacity," what do you mean?

8 BY MR. BLUMENFELD:

9 Q Who serves as an expert?

10 A Do I know anyone -- have I ever met anyone
11 at SEDA who serves as an expert, I believe the answer
12 to that is yes.

13 Q That's fine, and I appreciate that.

14 I wasn't asking if you met them. I was
15 asking if you know if there are other people who
16 serve as experts who are associated with SEDA?

17 A If I've met them, I guess to me that's the
18 same as knowing that they are an expert. This is not
19 rocket science.

20 Q How many people have you met?

21 A I don't know as I sit here today.

22 Q Can you give me an estimate?

23 A I have no idea.

24 Q You don't know how many people you've met
25 who are associated with SEDA as some sort of expert?

1 A That's correct.

2 Q And so as you sit here today, you can't
3 say whether you've met five people who are
4 associated with SEDA as an expert or 50 people who
5 are associated with SEDA as an expert or 500 people
6 or 5,000?

7 A I've met at least five. I doubt I've met
8 50. Definitely not 500 and definitely not 5,000. I'm
9 just trying to be as precise as possible here.

10 If you want me to give vague answers, it's
11 not going to behoove me to kind of speculate about,
12 oh, I know it's not 5,000. I mean, I can do that if
13 you prefer, but this will obviously take a lot
14 longer.

15 Q I just want you to provide the truthful
16 information and I will follow up to the extent that
17 I think either my question wasn't quite clear or you
18 didn't understand it or you didn't give an answer
19 that I was expecting.

20 Do you remember the names of the people
21 that you met who consider themselves to be
22 associated with SEDA as an expert?

23 MR. TANG: Object to form.

24 THE WITNESS: So now we're talking about
25 people I met as opposed to people I'm aware are

1 experts; is that correct?

2 BY MR. BLUMENFELD:

3 Q It is.

4 A I believe Peter Selman, Damiano -- I'm not
5 going to remember their last names. I know someone
6 named Damiano. There is another expert, his first
7 name is Sergio. Those are all three managing partners
8 of the firm.

9 I am aware that Richard Marin -- I believe
10 it's Richard Marin -- is an expert -- it's Richard
11 Mann, I'm sorry.

12 Off the top of my head, those are the
13 names that I recall. I mean, I know there's more.
14 I have met more; I just don't recall their names.
15 I'm not very good with names, unfortunately.

16 Q Did anybody help you in connection with
17 the preparation of this report that you submitted in
18 this case?

19 A They did.

20 Q Did other people from SEDA help you in the
21 preparation of your report in this case?

22 A What do you mean by "from SEDA"?

23 Q Anybody who's associated with SEDA in any
24 capacity.

25 A As either a W2 or 1099 employee?

1 Q Or it could be -- have some other
2 relationship with SEDA that I am not aware of.

3 A Alexander Huang, that's spelled -- the last
4 name is H as in Harry, A-U-N-G (sic).

5 Q Anybody else?

6 A I'm sorry, I believe there's one other
7 gentlemen in Italy who helped provide Alex with some
8 data that I have not -- but I have not spoken with
9 him. I don't recall his name as I sit here.

10 Q You referred to this person as Alex. Is
11 that the name than he goes by?

12 A Which person are we talking about now?

13 Q You said that there was an individual by
14 the name of Alex -- I thought the last name was
15 Huang?

16 A That's correct.

17 Q Does that person go by the name Alex?

18 A I believe so.

19 Q Did you explain a moment ago that that
20 person was coordinating with somebody in Italy whose
21 name you don't know in helping you prepare this
22 report?

23 A That's correct.

24 Q Okay. So my question I think that I
25 started out with was: What did Alex do to help you

1 prepare this report?

2 A Can you go back in the deposition and see
3 where you asked me that question? I don't recall that
4 being asked. I want to make sure I'm giving the most
5 precise answers as possible.

6 Q I'm asking it now, so you can just answer
7 it now.

8 A I'm sorry, could you reask the question?

9 Q What did Alex do in assisting you to
10 prepare this report?

11 A He helped draft the report and he helped
12 with the calculations and putting together the
13 exhibits.

14 Q Anybody else?

15 A I believe that's all.

16 Q The individual that is in Italy whose name
17 you don't recall, what did he or she do to help you
18 prepare this report?

19 A I believe they downloaded data for Alex and
20 myself, but Alex dealt directly with them.

21 Q Did that person do anything besides
22 download the data and provide that to Alex and
23 indirectly to yourself?

24 A For the purpose of my report?

25 Q Correct.

1 A No.

2 Q Anybody else help you in the preparation
3 of your report aside from Alex and the person in
4 Italy?

5 A As I sit here, it's possible that Dylan
6 McCabe -- I can spell that for you if you like -- may
7 have assisted briefly. But as I sit here, I don't
8 know for sure.

9 Q Who prepared the first draft of your
10 report?

11 A Both Alex and I did.

12 Q And what was the process?

13 A We drafted the report.

14 Q Were you sitting next to each other?

15 A No.

16 Q How did the draft of the report get
17 exchanged between you and Alex?

18 A I believe via email, but it may -- I'm
19 trying to remember. I don't remember the name of the
20 sharing program on Microsoft.

21 It might just be Microsoft share, but I
22 don't -- actually as I sit here, I don't recall
23 having actually done that. So my guess is strictly
24 through email.

25 Q Do you recall if Alex sent you the first

1 draft of the report or if you sent him the first
2 draft of the report?

3 A I don't recall as I sit here.

4 Q Do you know a person named Svetla Tzenova?

5 A I've heard that name before. I believe I've
6 met her once, but that is speculation on my part. I'm
7 not sure about that.

8 Q Do you remember anything about her other
9 than you've heard her name before?

10 A I believe she had a Ph.D. and she formally
11 worked at NERA.

12 Q You understand that she's associated with
13 SEDA now?

14 A I do. So to the extent that you asked me
15 about people who do work similar to me at SEDA, she
16 would be included.

17 Q Do you know, does SEDA have a 401(k) plan?

18 A I do not know that.

19 Q Do you participate in any 401(k) plans?

20 A When you say "participate," what do you
21 mean?

22 Q Are you a participant in?

23 A I don't know how to answer that. I'm part
24 of CalPERS. I don't know if you put that under the
25 401(k) umbrella or not.

1 Q Do you know if CalPERS is a 401(k) plan or
2 something else?

3 A I do not as I sit here today.

4 Q Do you participate in any other retirement
5 plans aside from the CalPERS plan?

6 A I don't believe so.

7 Q And CalPERS, the plan that you participate
8 in that you were referring to, is a defined
9 contribution retirement plan?

10 A I believe so.

11 Q One where you select investment options
12 from among the choices that CalPERS makes available?

13 A As I sit here, I don't recall. I joined
14 about ten years ago, I don't remember -- I don't
15 remember what the process was or whether or not I was
16 given investment options.

17 Q Do you still have an account in the
18 CalPERS retirement plan?

19 A I do.

20 Q Does it have investments in it?

21 A I don't understand the question.

22 Q Does your account in the CalPERS
23 retirement plan have investments in it?

24 A What do you mean "investments in it"?

25 Q Do you hold any investments within your

1 account within the CalPERS retirement plan?

2 A I don't know how to answer that question.

3 Q Okay. Do you know approximately the
4 balance in your retirement plan with CalPERS?

5 A I do not.

6 Q You have no idea?

7 A That's correct.

8 Q Okay. Do you still contribute to that
9 retirement plan?

10 A I do not.

11 Q When did you stop contributing to that
12 retirement plan?

13 A When I stopped working at Cal Poly.

14 Q Dr. Werner, if you look in the marked
15 exhibits folder for Veritext, you should see
16 hopefully a copy of your report.

17 (Whereupon, Exhibit 1 was marked for
18 identification.)

19 THE WITNESS: Let me refresh it.

20 BY MR. BLUMENFELD:

21 Q Take your time.

22 A Exhibit 1?

23 Q Correct.

24 A I've opened it.

25 Q If you have a paper copy of your report in

1 front of you, you can certainly feel free to use
2 that if that's easier for you, but the official copy
3 will be the one that's marked as an exhibit.
4 Understood?

5 A Yes. Just so you know, I don't have a paper
6 copy in front of me.

7 Q Do you have any other documents in front
8 of you?

9 A I have my son's medical insurance card.

10 Q Anything related to this case?

11 A No.

12 Q Am I correct that Exhibit 1 is a copy of
13 your expert report in this case?

14 A It appears to be.

15 Q You submitted it on August 1st of 2024 of
16 this year?

17 A That's correct.

18 Q Do you remember when you were first
19 retained in connection with this case?

20 A I do not.

21 Q Can you approximate?

22 A Within the last two years.

23 Q And you cannot give me any better estimate
24 than that?

25 A No.

1 Q Do you recall when you started working on
2 your report in this case?

3 A I do not.

4 Q And you can't approximate that either?

5 A Within calendar year 2024.

6 Q As you sit here today, sir, do you know if
7 plaintiffs in this case have any other experts?

8 A I believe they do.

9 Q Do you know who they are?

10 A Again, I believe one of them is named
11 Richard Mann. But I can refresh my memory by looking
12 at the firm's website. I will do that at the break,
13 but I believe that's his name.

14 Q Are you aware of any other experts aside
15 from the individual you identified as Mr. Mann? I
16 think it's Marin by the way.

17 A It is Marin, thank you.

18 Q Sure. Any others?

19 A No.

20 Q Have you seen Mr. Marin's report in this
21 case?

22 A I have not.

23 Q Have you seen any other expert reports in
24 this case aside from the one from Mr. Marin?

25 A I'm sorry. So I haven't seen Mr. Marin's

1 report and I haven't seen any other reports.

2 I don't know if there are other reports or
3 whether Mr. Marin has submitted a report or is still
4 waiting to submit a report.

5 Q Got it.

6 Are you aware of the fact that defendants
7 have submitted an expert report in this case?

8 A I may have been made aware of that the other
9 day, but I don't specifically know that that is the
10 case. I believe someone made reference to it.

11 Q Who made reference to it?

12 A One of the attorneys at Miller Shah.

13 MR. TANG: I want to caution you you're
14 getting into communications between you and my
15 colleagues.

16 THE WITNESS: Understood.

17 MR. TANG: Thank you, Doctor.

18 BY MR. BLUMENFELD:

19 Q Dr. Werner, did you see a copy of an
20 expert report from any of the defendants' experts?

21 A I have not.

22 Q Am I right, sir, that you were retained by
23 plaintiffs to provide an estimate of losses suffered
24 by the Quanta plan under certain assumptions?

25 A Well, I mean, we might as well just read it

1 from my report because that will give us the most
2 accurate answer.

3 So I was asked by Miller Shah "to apply a
4 common damages methodology and provide an estimate
5 of losses for the Quanta Services Incorporated
6 401(k) savings plan (the 'Plan') attributable to
7 Class members who participated in the Plan at any
8 time on or after September 26th, 2016.
9 Specifically, I was asked to provide an estimate of
10 losses suffered by the Plan under the following
11 assumptions."

12 And you mentioned that I was asked to do
13 that under a set of assumptions. I don't -- I
14 believe that answers your question. I don't believe
15 I need to, at least at this point, read the
16 assumptions that I was asked to assume.

17 But I'm happy to if you would like me to.

18 Q No, that's okay. I have the report in
19 front of me, too, so I can read it as well.

20 I may ask you specific questions during
21 the course of our time today, but you don't need to
22 read the whole report or all of Paragraph 1.

23 The assumptions that you include, A, B, C
24 and D to your report, those are the only assumptions
25 that you made; correct?

1 A I believe that's correct.

2 Q When you submitted your report on
3 August 1st of 2024, did you know whether the
4 plaintiffs had any other experts?

5 A I did.

6 Q And what did you know at that point in
7 time?

8 A That they had at least one other expert.

9 Q Did you know who that expert was?

10 A I did.

11 Q You knew it was Mr. Marin?

12 A That's correct.

13 Q Did you know what Mr. Marin's opinions
14 were?

15 A To the extent that they informed the
16 assumption that I made, I believe so. But I've not
17 seen his report, I have not spoken with him.

18 Q In other words, you think your
19 supposition, maybe I'll call it, was that the
20 assumptions you were asked to make are things that
21 Mr. Marin was offering opinions about?

22 A That's correct.

23 Q Did you do anything to test the validity
24 of any of the assumptions that you described in
25 Paragraph 1 of your report?

1 A When you say "test the validity," what do
2 you mean?

3 Q Did you do anything to see whether those
4 assumptions, in fact, were correct or not correct?

5 A I am a little confused. So when you say
6 "correct or not correct," so he's providing an
7 opinion. My guess is the court will decide whether or
8 not that -- those opinions are valid. Is that what
9 you mean by "correct"?

10 Q I'm asking about assumptions you made, so
11 let's skip to -- or be more specific and we'll talk
12 about Assumption 1A in your report, which was that
13 "The retention of the Fidelity Freedom Funds
14 Target-Day Suite," which you called the Fidelity
15 Freedom TDFs, "in the Plan was imprudent as of
16 4Q2016."

17 Do you see that?

18 A I do.

19 Q Did you do anything to see whether that
20 was correct or not correct?

21 A No.

22 Q Did you do anything to see whether that
23 was reasonable or not reasonable?

24 MR. TANG: Object to form.

25 THE WITNESS: No.

1 BY MR. BLUMENFELD:

2 Q What about the rest of the assumptions
3 that are in Paragraph 1A, B, C and D, did you do
4 anything to test or evaluate whether they were
5 correct or not?

6 A Again, I am a little uncomfortable with your
7 use of the word "correct." But I didn't do anything
8 to validate those assumptions.

9 Q And you did not do anything to evaluate
10 whether they were reasonable assumptions or not;
11 correct?

12 MR. TANG: Object to form.

13 THE WITNESS: I did not -- I was not asked
14 to determine whether they were reasonable or
15 unreasonable.

16 BY MR. BLUMENFELD:

17 Q That's fine.

18 But did you?

19 A I did exactly what I was asked to do, as I
20 explained in reading Paragraph 1 to Exhibit 1 of this
21 deposition.

22 Q Okay. Did you do anything to test whether
23 it was reasonable to conclude that the Fidelity
24 target-date funds should have been replaced with the
25 American Funds' target-date funds as of Q12017?

1 A Can you repeat the question, please?

2 Q Sure. Let's be specific about it.

3 I'm looking at your assumption in
4 Paragraph 1A. You say that part of what you were
5 asked to assume was that the plan's fiduciaries
6 should have replaced the Freedom -- Fidelity Freedom
7 TDFs with the American Funds' TDF R6 suite as of
8 Q12017; correct?

9 A That's correct.

10 Q Okay. Did you do anything to assess
11 whether that was reasonable or not?

12 A Excuse me. I did not.

13 Q In Paragraph 1B, there are other
14 assumptions that you describe there regarding the
15 American Beacon Small Cap Value Fund and the Janus
16 Henderson Small Cap Value N fund; correct?

17 A That's correct.

18 Q Did you do anything to assess whether any
19 of the assumptions that are in Paragraph 1B of your
20 report were reasonable or not?

21 A I did not.

22 Q Okay. What about Paragraph 1C, same
23 question?

24 A I did not.

25 Q What about Paragraph 1D?

1 A Can you repeat the question --

2 Q Sure.

3 A -- in full with regards to 1D?

4 Q Paragraph 1D of your report says that you
5 were asked to assume, quote, "That the terminal date
6 for all loss calculations for purposes of this
7 Expert Report should be June 30, 2024 or Q2 2024."
8 Correct?

9 A Hold on one second.

10 Right. So my understanding, and I'm
11 looking now at Footnote 1 to my report -- or
12 Footnote I to Exhibit 1 of this deposition,
13 June 30th, 2024 reflects the last quarter end for
14 which data was available at the time of submitting
15 this expert report.

16 I reserve the right to update the
17 calculation to losses beyond June 30th, 2024 based
18 on subsequently available data should I be asked by
19 counsel or the court and to include a calculation of
20 prejudgment interest.

21 So I don't know whether or not that -- are
22 you asking me is that a reasonable assumption to
23 make? I guess I don't understand the question.

24 Q So the question was whether the text in
25 your Assumption 1D which says that you were asked to

1 assume that the terminal date for all loss
2 calculations for purposes of your expert report
3 should be June 30, 2024 or Q22024; correct?

4 A That was read correctly, yes.

5 Q That's the assumption that plaintiff's
6 counsel asked you to make?

7 A I don't know. To the extent that we did not
8 have data beyond that, I believe that's correct.

9 Q Okay. And did you do anything to assess
10 whether that was a reasonable assumption to make or
11 not?

12 A I did not.

13 Q Okay. If you turn, sir, to Exhibit 2 of
14 your expert report, which I believe is internal
15 Page 18 of your report. Let me know when you have
16 that.

17 A I'm there.

18 Q This Exhibit 2 to your report, which is
19 Deposition Exhibit 1, is the list of the documents
20 and other information you considered in preparing
21 your report; correct?

22 A That's correct.

23 Q Okay. You don't list any expert reports
24 on the materials that you considered, Exhibit 2 to
25 your Deposition Exhibit 1; correct?

1 A That's correct.

2 Q And that's because you did not consider
3 any other expert reports in forming the opinions
4 that are reflected in your expert report; correct?

5 A I don't know how to answer that question.

6 Q Did you consider any other expert reports
7 in forming the opinions that are reflected in your
8 report?

9 A I don't -- did I consider them? To the
10 extent that I was asked to make certain assumptions
11 that may have been informed by someone else's expert
12 report, I don't know how to answer that question.

13 Q Okay. Do you think that any other expert
14 reports should be listed on your expert report,
15 Exhibit 2, "Documents and Other Information
16 Considered"?

17 A As I sit here today, I don't believe so.

18 Q I'm sorry, say that again.

19 A As I sit here today, I don't believe so.

20 Q Okay. Am I correct, Dr. Werner, that you
21 don't consider yourself to be offering an opinion on
22 any issues of liability in connection with this
23 case?

24 A That's correct.

25 Q And am I correct that you're not offering

1 an opinion about whether the Fidelity Freedom Funds
2 were reasonable investments for the plan?

3 A That's correct.

4 Q You're also not offering an opinion about
5 whether the Fidelity Freedom Funds were reasonable
6 investments for any other plan?

7 A I don't believe so.

8 Q Did you analyze whether the Fidelity
9 Freedom Funds were reasonable or appropriate
10 investments for the plan in 2016?

11 A What do you mean by "analyze"?

12 Q Did you undertake any steps to analyze
13 whether the Fidelity Freedom Funds were reasonable
14 and appropriate investments for the plan in 2016?

15 A So in asking you to define "analyze," you
16 used "analyze" in your definition. So I'm not any
17 clearer as to what you're asking.

18 Q Did you undertake any steps that you would
19 consider to be analyzing whether the Fidelity
20 Freedom Funds were reasonable and appropriate
21 investments for the plan in 2016?

22 A No.

23 Q Okay. What about in 2017?

24 A No.

25 Q What about 2018?

1 A No.

2 Q 2019?

3 A No.

4 Q 2020?

5 A No.

6 Q 2021?

7 A No.

8 Q 2022?

9 A No.

10 Q 2023?

11 A No.

12 Q 2024?

13 A No.

14 THE WITNESS: We've been going for about a
15 half an hour here, is now a good time to take a
16 break?

17 MR. BLUMENFELD: If you would like, we can
18 certainly do that, sure.

19 How much time would you need, Dr. Werner?

20 THE WITNESS: Five minutes.

21 THE VIDEOGRAPHER: Off the record. This
22 marks the end of Media Number 1. Going off the
23 record at 9:40 a.m. Pacific.

24 (Recess taken.)

25 THE VIDEOGRAPHER: We're back on the

1 record at 9:47 a.m. Pacific. This marks the 0
2 beginning of Media Number 2 in the deposition of
3 Dr. Adam Werner.

4 Please proceed, counsel.

5 MR. BLUMENFELD: Thank you.

6 Q Dr. Werner, you understand that we are
7 back on the record?

8 A I do.

9 Q And you understand that you're still under
10 oath?

11 A I do.

12 Q You have the same obligation to tell the
13 truth as if you were testifying in front of a judge
14 and/or a jury?

15 A I do.

16 Q Great.

17 Before the break, I was asking you about
18 some of the things that I think you're not offering
19 opinions about in your report. I want to continue
20 with that.

21 In preparing your report, did you analyze
22 whether the Fidelity Freedom Funds were reasonable
23 or appropriate investments for any other plans in
24 2016?

25 A I don't believe so.

1 Q Okay. What about 2017?

2 A I don't believe so.

3 Q 2018?

4 A I don't believe so.

5 Q 2019?

6 A I don't believe so.

7 Q 2020?

8 A I don't believe so.

9 Q 2021?

10 A I don't believe so.

11 Q 2022?

12 A You know, at this point, I've forgotten what
13 the original question was. Can you reread it and
14 stick in 2022 as the date?

15 Q Did you analyze whether the Fidelity
16 Freedom Funds were reasonable or appropriate
17 investments for any other plans in 2022?

18 A I don't believe so.

19 Q What about 2023 or 2024?

20 MR. TANG: Object to form.

21 THE WITNESS: I don't believe so.

22 BY MR. BLUMENFELD:

23 Q Did you undertake any analysis of whether
24 the American Funds' target-date fund were reasonable
25 or appropriate investments in 2016 to 2024?

1 A I don't believe so.

2 Q Did you analyze the risks, fees,
3 investment holdings, investment strategy, glide path
4 or any other characteristics of the Fidelity Freedom
5 Funds?

6 A Can you reread the question, please?

7 Q I'll ask it slightly differently.
8 Did you analyze the risk, fees, investment
9 holdings, investment strategy or glide path of the
10 Fidelity Freedom Funds?

11 A I don't believe so.

12 Q What about the American Funds, did you
13 analyze the risk, fees, investment holdings,
14 investment strategy or glide path of the American
15 Funds?

16 A I'm sorry, I'm confused now because there's
17 so many things in this one question and yet when we
18 went through the dates, we went through each date.

19 Why don't you ask me each factor and I'll
20 be able to give a more accurate answer to make sure
21 I'm not missing anything?

22 Q Do you want me to go back and ask you the
23 same question about the Fidelity Freedom Funds or
24 about the American Funds?

25 A Both.

1 Q Did you analyze the risk of the Fidelity
2 Freedom Funds?

3 A When you say "risk," what do you mean?

4 Q Any measure of risk.

5 A Any measure of risk? I'm sorry --

6 Q Yes.

7 A How do you define "risk"?

8 Q How would you define risk?

9 A Depends on the context.

10 Q Okay. In any context, did you analyze the
11 risk of the Fidelity Freedom Funds?

12 A In any context? I don't believe so.

13 Q What about the fees of the Fidelity
14 Freedom Funds?

15 A I do not believe so.

16 Q What about the investment holdings of the
17 Fidelity Freedom Funds?

18 A I don't believe so.

19 Q What about the investment strategy of the
20 Fidelity Freedom Funds?

21 A I don't believe so.

22 Q What about the glide path of the Fidelity
23 Freedom Funds?

24 A I don't believe so.

25 Q Do you know what a glide path is?

1 A I believe so.

2 Q Tell me what your understanding is.

3 A It's the time span of -- "time span" might
4 be wrong, but it's basically how a fund is --
5 distributes its funds through the end of its -- well,
6 through the end of time.

7 Q Did you evaluate the risk of the American
8 Funds?

9 A I don't believe so.

10 Q Did you evaluate the fees of the American
11 Funds?

12 A I don't believe so.

13 Q Did you evaluate the investment holdings
14 of the American Funds?

15 A I don't believe so.

16 Q Did you evaluate the investment strategy
17 of the American Funds?

18 A I don't believe so.

19 Q And did you evaluate the glide path of the
20 American Funds?

21 A I don't believe so.

22 Q Did you evaluate the risk of any other
23 target-date funds?

24 A I don't believe so.

25 Q Did you evaluate the fees of any other

1 target-date funds?

2 A I don't believe so.

3 Q Did you evaluate the investments holdings
4 of any other investment funds?

5 A I don't believe so.

6 Q Did you evaluate the investment strategy
7 of any other target-date funds?

8 A I don't believe so.

9 Q Did you evaluate the glide path of any
10 other target-date funds?

11 A I don't believe so.

12 Q Do you have an understanding, sir, of the
13 difference between active management and passive
14 management?

15 A Do I have an understanding?

16 Q Yes.

17 A Yes.

18 Q Did you evaluate whether the Freedom Funds
19 were actively managed or passively managed?

20 A I did not.

21 Q Did you evaluate whether the American
22 Funds were actively managed or passively managed?

23 A I did not.

24 Q Did you evaluate whether any other
25 target-date funds were actively managed or passively

1 managed?

2 A I did not.

3 MR. BLUMENFELD: Sam, could we upload the
4 complaint?

5 Q Dr. Werner, you have to be patient, it
6 takes a couple of minutes to get uploaded, then
7 downloaded, so --

8 A Okay.

9 MR. BLOCK: It should be there now.

10 MR. BLUMENFELD: Thank you.

11 THE WITNESS: Do I have to go back? So I
12 have my report open, do I have to close it?

13 BY MR. BLUMENFELD:

14 Q You might be able to download a copy of
15 your report.

16 A Let me try doing that, maybe that will be
17 easier.

18 Okay. I've opened the complaint.

19 Q Do you also have your report handy?

20 A Hold on. I should be -- yes, I can tab back
21 and forth.

22 Q Wonderful. The report is a document, not
23 surprising to you perhaps, that we're going back and
24 forth on several times.

25 So you have the complaint; correct?

1 A I do. Just as a point of clarification, did
2 I miss Exhibits 2 and 3 or are we just jumping around?

3 MR. BLOCK: I premarked 2 and it did not
4 update, so I'll change that during a break.

5 (Whereupon, Exhibit 2 was marked for
6 identification.)

7 THE WITNESS: I'm okay with it, just
8 curious.

9 BY MR. BLUMENFELD:

10 Q And the complaint is one of the documents
11 that you say in your report you considered as you
12 were forming your opinions in this case; correct?

13 A That's correct.

14 Q And so you read the complaint before you
15 prepared your report?

16 A Correct.

17 Q Could you turn to Paragraph 25 of the
18 complaint.

19 A Okay. I'm there.

20 Q The third sentence of that paragraph says,
21 "Among its target-date offerings, Fidelity offers
22 the riskier and more costly Freedom Funds (the
23 'Active suite') and the less risky and less costly
24 Freedom Index funds (the 'Index suite')." "

25 Do you see that?

1 A I do.

2 Q Before seeing the complaint in this case,
3 were you aware that Fidelity offered different
4 target-date funds?

5 A As a general matter, I believe so.

6 Q Not just different target-date funds but
7 different suites of target-date funds like the
8 Active suite and Index suite that are described in
9 Paragraph 25?

10 A Correct.

11 Q Did you evaluate whether the Active
12 suite -- first, do you understand which is the
13 subject of plaintiff's complaint in this lawsuit?

14 A Well, I mean, why don't we go to the
15 beginning of the complaint.

16 Can you repeat the question?

17 Q Let me ask the question again to make sure
18 I get it right and you hear me correctly,
19 Dr. Werner.

20 Do you have an understanding as to which
21 target-date funds plaintiffs are complaining about
22 in their lawsuit?

23 A I believe the target-date funds that I
24 analyzed.

25 Q Okay. And do you see how they are

1 described in the complaint?

2 A I'm happy to read through the complaint and
3 tell you how they are described if you give me some
4 time.

5 Q Well, the complaint here, first of all,
6 defines --

7 A I'm sorry, do you want me to try to answer
8 the question or are you going to explain something to
9 me? Are you no longer asking that question?

10 Q Why don't you answer the question that I
11 am about to ask you.

12 A Okay.

13 Q The complaint in Paragraph 25 describes
14 the Active suite and the Index suite; correct?

15 A Correct.

16 Q Okay. Do you have an understanding as to
17 which one of those is the subject of plaintiff's
18 complaint in this lawsuit?

19 A As I sit here today, I don't recall.

20 Q You don't know whether the funds that
21 you're offering opinions about were the Active suite
22 or the Index suite or something different?

23 A Okay. Let's -- let me read through the
24 complaint because I've not looked at this for a little
25 while. So it will refresh my memory and I'll be able

1 to give you an accurate answer to that question.

2 So reading from Paragraph 24 of the
3 complaint, "All TDFs are inherently and actively
4 managed, because managers make changes to the
5 allocations to stocks, bonds, and cash over time."

6 Let me keep reading.

7 Q Sure.

8 A I believe that's my answer.

9 Q Dr. Werner, my question was: Do you know
10 which target-date funds the plaintiffs were
11 complaining about in the complaint?

12 A Yes.

13 Q Which?

14 A The ones that I analyzed.

15 Q And where do you see that in the
16 complaint?

17 A Hold on.

18 I'm sorry. I gave you the answer to the
19 question. And now what do you want me to look at
20 the complaint for?

21 Q Do you know whether plaintiffs are
22 complaining about the Active suite or the Index
23 suite or something else?

24 A I believe it's -- to the best of my
25 recollection, it's the Active suite. But I remember

1 seeing mention of the index funds well. But I believe
2 to the best of my recollection it's the active funds.

3 Q Okay. And you quoted before some language
4 from Paragraph 24 of the complaint. And the
5 language you quoted was the middle of that paragraph
6 which says, "All TDFs are inherently actively
7 managed, because managers make changes to the
8 allocations to stocks, bonds, and cash over time."
9 Correct?

10 A Correct.

11 Q Am I right that you were reading that
12 before, you're not offering that as your opinion in
13 connection with this case?

14 A That's not my -- I mean, I don't agree or
15 disagree. I mean, I understand the statement. Do I
16 agree or disagree with it? I agree with it.

17 Q Did you offer that opinion in your report?

18 A I did not.

19 Q Okay. Did you analyze that?

20 A "Analyze" meaning what?

21 Q Did you do anything to analyze whether it
22 was correct or not correct?

23 A That all funds are actively managed by
24 definition?

25 Q Yes.

1 A I don't understand the question.

2 Q What about the question don't you
3 understand?

4 A I don't understand the question. I mean,
5 what analysis are you referring to? Under what
6 definition of analysis?

7 Q Any definition of analysis.

8 A Just thinking, is that considered an
9 analysis?

10 Q Sure.

11 A So I read that statement, I thought about
12 it, it seemed reasonable. If that falls under the
13 umbrella of analysis, then I suppose I did perform an
14 analysis as you've defined it.

15 Q And that's an analysis that you did when
16 you were preparing your report?

17 A What I was -- was that -- again, this is
18 under your definition of analysis where thinking is
19 considered an analysis, did I consider that when I was
20 preparing my report, yes. Did I consider it as I sit
21 here today reading that sentence, yes.

22 Q You don't include anything about that in
23 your report, though; correct?

24 A I don't believe so. But that's not the
25 question you asked me.

1 Q It's the question I'm asking you now.

2 A So are we going to focus on my report or are
3 you going to ask me questions about analyses or
4 thoughts that I have?

5 Q Dr. Werner, my job is to ask you questions
6 today. Your job is to answer them and to do so
7 truthfully.

8 A Okay. Well, to the extent that you're
9 asking very vague questions, it's difficult to answer
10 some of them.

11 So if you tell me that analysis includes
12 things like thinking, we're going to get into a
13 philosophical conversation about what the definition
14 of "analysis" is.

15 And, I mean, I'm sitting here, I'm
16 thinking about this deposition, does that mean I'm
17 analyzing the deposition as you've defined analysis?

18 Q Can you turn to Paragraph 41 of the
19 complaint.

20 A I'm sorry, what paragraph?

21 Q Paragraph 41.

22 A I'm there.

23 Q The first sentence says, "Even a minor
24 increase in a fund's expense ratio can considerably
25 reduce long-term retirement savings."

1 Do you see that?

2 A I do.

3 Q Did you include any sort of analysis of
4 that in your report?

5 A Strictly within my report but not thinking
6 about -- I mean, I understand this statement.
7 Sticking with the report, I don't believe so.

8 Q Okay. The second sentence says, "The fees
9 charged by the Active suite are many multiples
10 higher than the Index suite's industry-leading low
11 fees."

12 Do you see that?

13 A I do.

14 Q Okay. Did you include anything in your
15 report analyzing that?

16 A I don't believe so.

17 Q The next sentence says, "While the
18 Institutional Premium share class for each target
19 year of the Index suite charges a mere 8 basis
20 points, (0.08 percent), the K share class of the
21 Active suite - which the Plan offers - has expense
22 ratios ranging from 42 basis points (0.42 percent)
23 to 65 basis points (0.65 percent)."

24 Do you see that?

25 A I do.

1 Q Okay. And did you do anything in your
2 report to analyze any of the information contained
3 in the allegations in that sentence of Paragraph 41?

4 A I don't believe so.

5 Q Okay. There's also a chart in
6 Paragraph 41 that has ticker symbols of the Fidelity
7 Freedom Funds that the complaint is alleging the
8 plan offers; correct?

9 A That's my understanding.

10 Q And it also has separate ticker symbols
11 for the Index suite?

12 A I'm sorry, where are you looking?

13 Q The same chart, Paragraph 41.

14 A What was the question?

15 Q The question I was just asking is whether
16 the chart in Paragraph 41 also includes ticker
17 symbols for the Index suite?

18 A As I sit here today, I don't know.

19 Q Do you see the chart that says "Cost
20 Comparison"?

21 A I do.

22 Q Okay. Do you see the leftmost column is
23 entitled "Freedom Suite"?

24 A I do.

25 Q And then the next column over is "Ticker";

1 right?

2 A Right.

3 Q And the next column over is "Expense
4 Ratio"?

5 A Correct.

6 Q The next column over is the "Freedom Index
7 Suite"?

8 A Correct.

9 Q And then the next column over is the
10 "Ticker"?

11 A Correct.

12 Q So you understand that that column is
13 showing the ticker symbol for the Freedom Index
14 suite; correct?

15 A That's my understanding.

16 Q Okay. And the second column from the left
17 is showing the Fidelity Freedom Funds that were in
18 the plan and ticker symbols that plaintiffs were
19 complaining about?

20 A I believe that is correct.

21 Q Could you turn to Paragraph 29 of the
22 complaint.

23 A Okay. I'm there.

24 Q Have you had a chance to read that?

25 A I have.

1 Q The first sentence of Paragraph 29 says
2 that "The Active suite and the Index suite are
3 sponsored by the same investment management company
4 and share a management team." Correct?

5 A That's correct.

6 Q Okay. And in preparing your report, did
7 you do any analysis of whether that was true or not?

8 A I did not. I have no reason to think it's
9 not correct. But I did not independently verify.

10 Q And Footnote 3 to Paragraph 29 identifies
11 the name of the people who the complaint alleges
12 were managing both the Active suite and the Index
13 suite?

14 A That's correct.

15 Q The second sentence in Paragraph 29 says,
16 quote, "But while the Active suite invests
17 predominantly in actively managed Fidelity mutual
18 funds, the Index suite places no assets under active
19 management and instead invests in Fidelity funds
20 that simply track market indices." Correct?

21 A You read that correctly.

22 Q Did you do anything in your report to
23 analyze whether that sentence of Paragraph 29 is
24 true?

25 A Within my report, no.

1 Q Did you do something aside from your
2 report to evaluate whether that was true or not?

3 A Well, now we're talking is this thinking
4 include -- does that fall under the umbrella of
5 evaluating or are we separating evaluating from
6 analyzing?

7 Q Did you think about this sentence in
8 Paragraph 29?

9 A Have I thought about it, yes, I've thought
10 about it.

11 Q Do you consider what you did to be
12 evaluating whether the Active suite invests
13 predominantly in actively managed Fidelity mutual
14 funds?

15 A I'm sorry, can you repeat the question?

16 Q Let me try and be more clear about it.

17 Did you evaluate whether the Active suite
18 invests predominantly in actively managed Fidelity
19 mutual funds?

20 A Where thinking is under the rubric of
21 evaluation, I have thought about it, but I haven't
22 included any opinions about that in my report.

23 Q Okay. When you thought about it, what did
24 you understand to be the percentage of investments
25 in the Active suite that were actively managed

1 Fidelity mutual funds?

2 A I'm sorry, can you repeat the question?

3 MR. BLUMENFELD: Lynne, can you read that
4 question back?

5 (Requested testimony read by the reporter.)

6 THE WITNESS: I did not think about that.

7 BY MR. BLUMENFELD:

8 Q Do you know how much the Active suite
9 invests in actively managed Fidelity mutual funds?

10 A As I sit here today, no. It's possible.
11 But again, the key word being "possible."

12 If I'm looking at Footnote 4, it says,
13 "Per Morningstar, the Active suite's underlying
14 holdings are 88.8 percent actively managed, by asset
15 weight."

16 But that's nothing I thought about or
17 that -- and in no way did that inform my opinion --

18 Q You did not --

19 A -- that I express here in my report.

20 Q I'm sorry, I didn't mean to talk over you.
21 Say what you said again.

22 A I don't recall what I said.

23 Q Okay.

24 A It is that -- my understanding of that is
25 not reflected in my report and has not affected any

1 opinions that I provided in my report.

2 Q Okay. And the next sentence says that the
3 Index suite -- the next part of the sentence says,
4 "the Index suite places no assets under active
5 management."

6 Do you know whether that's true or not?

7 A I don't know one way or the other whether
8 that's true.

9 Q And you did not evaluate that issue in
10 preparing your report?

11 A In preparing my report, no.

12 Q And you did not evaluate that issue at any
13 point since preparing your report?

14 A Again, I don't want to get into semantics
15 here. If we're talking about -- if thinking is under
16 the umbrella or the rubric of evaluating, as I sit
17 here today and I'm reading this, I suppose by
18 definition I'm thinking about it. So I don't quite
19 know how to answer that question.

20 Again, this deposition is about my report.
21 These sentences -- or the questions you're asking me
22 have not informed my opinion or impacted the
23 opinions I've presented in my report.

24 Q As you sit here today, you don't know if
25 the Index suite places no assets under active

1 management or not?

2 A As I sit here today, I do not.

3 Q Dr. Werner, I think I might have covered
4 this in an earlier question, but I'm not entirely
5 sure.

6 Did you look at the performance of the
7 Index suite?

8 A Did I look at the performance of the Index
9 suite?

10 I don't believe so. Not that I recall.

11 Q You did not do any analysis comparing the
12 performance of the Active suite to the Index suite?

13 A I did not, in preparing my report.

14 Q Did you do that at any other time?

15 A I mean, to the extent, again, that we're
16 talking about it now and thinking -- you've decided
17 that evaluating or analyzed something includes
18 thinking about it.

19 To the extent I'm reading it, my brain is
20 thinking about it. So I suppose I'm evaluating it
21 now.

22 But it doesn't inform my opinions about my
23 report, which is really what this deposition is
24 about to the best of my understanding.

25 Q And having thought about it now in the

1 course of this deposition, do you have an
2 understanding as to whether the Active suite or the
3 Index suite has performed better?

4 A That has no bearing -- have I thought about
5 it? I've thought about it. It doesn't affect my
6 opinion in any way, shape or form.

7 Q Do you have an understanding of which one
8 has performed better?

9 A In general?

10 Q Yes.

11 A Again, it hasn't impacted -- my
12 understanding or non-understanding of that doesn't
13 affect my opinion with regards to anything I've
14 written in my report.

15 Q I understand that you're saying that. My
16 question was a little bit different, though.

17 Do you have an understanding as to whether
18 which has performed better, the Active suite or the
19 Index suite?

20 MR. TANG: Object to form.

21 THE WITNESS: Right. What do you mean by
22 "better"?

23 BY MR. BLUMENFELD:

24 Q Better performance.

25 A Right. What do you mean? There are two

1 components of performance, right, return and risk. I
2 suppose also cost. So what do you mean?

3 Q You identified I think three factors that
4 you say impact whether something is better than
5 another, risk, cost and performance?

6 A Well, those would be things that I would
7 take under consideration if I was trying to evaluate a
8 fund.

9 Performance as you mentioned it, but
10 again, this has nothing to do with my report.

11 Q I'm just asking you questions --

12 A To the extent that this -- this is outside
13 the scope of my report.

14 Q And so you don't have an opinion as you
15 sit here today as to whether the Active suite or the
16 Index suite was better; correct?

17 A Again, how do you define "better"?

18 Q You identified three ways, risk, cost and
19 performance?

20 A Those are three components that could go
21 into the definition of better, but I'm asking for your
22 definition of better.

23 Q Have you evaluated the Active suite versus
24 the Index suite on any of those?

25 A Evaluate means thinking about it? Again,

1 for the purposes of preparing my report, no.

2 Q Okay.

3 A Why don't we stick with that? Since this is
4 a deposition about my report, I'll stick to answering
5 questions about my report.

6 Q So that's not the way this works,
7 Dr. Werner. I get to ask you questions and you have
8 to answer them. One of the materials you said you
9 relied upon --

10 MR. TANG: You're asking questions outside
11 his report. You're repeatedly quizzing him on the
12 complaint. What is the purpose of this?

13 MR. BLUMENFELD: Asking him about the
14 complaint you're saying is inappropriate, Kolin?

15 MR. TANG: You're repeatedly asking him
16 about items that are not related to his report.
17 You're asking him to form opinions about the
18 complaint --

19 MR. BLUMENFELD: I'm not asking him to
20 form opinions about things. He's been perfectly
21 fine telling me all of the times that he doesn't
22 have an opinion about things or didn't analyze
23 certain things and that's fine.

24 But I'm entitled to an answer to my
25 question.

1 Q So, Dr. Werner?

2 A What?

3 Q Did you evaluate whether the Active suite
4 or the Index suite was better when it comes to risk,
5 cost or performance?

6 A For the purposes of preparing my report, I
7 did not.

8 Q Did you in any other context?

9 A For the purposes of preparing my report, I
10 did not.

11 Q I understand that. That's not the
12 question that I asked.

13 A Well, again, see, you and I are going back
14 and forth about context, analysis, evaluate. You've
15 given an extremely broad definition of evaluate and
16 analysis to include the process of thinking.

17 So, again, have I thought about it, I'm
18 thinking about it right now. But with regards to my
19 report, it's not something that affects my opinion
20 in the report that I provided for this case, which
21 is, to my understanding, what this deposition is
22 about.

23 Q Have you looked --

24 A I understand that you can ask questions and
25 that's -- but to the extent you're asking about things

1 that are outside of the scope of my report, I don't --
2 to the best of my understanding, I don't have to
3 answer them.

4 Q That's not true, Dr. Werner. I'm allowed
5 to ask you questions and you are obligated to answer
6 them.

7 A I'm obligated to answer to the best of my
8 ability.

9 Q Correct.

10 A Right? So -- okay. I'm sorry, go ahead.
11 You know what, let's take a break. Now is a good time
12 for a break.

13 Q How much time would you like, Dr. Werner?

14 A Let's do ten minutes.

15 THE VIDEOGRAPHER: Okay. Going off the
16 record. This marks the end of Media Number 2.
17 Going off the record at 10:31 a.m. Pacific.

18 (Recess taken.)

19 THE VIDEOGRAPHER: We're back on the
20 record at 10:41 a.m. Pacific. And this marks the
21 beginning of Media Number 3 in the deposition of
22 Dr. Adam Werner.

23 Please proceed, counsel.

24 MR. BLUMENFELD: Thank you.

25 Q Dr. Werner, do you understand that we are

1 back on the record?

2 A I do.

3 Q And you understand you're still under
4 oath?

5 A That's my understanding.

6 Q And you have the same obligation to tell
7 the truth as if you were testifying live in front of
8 a judge or a jury?

9 A That's my understanding of what under oath
10 means.

11 Q Okay. Dr. Werner, did you do any
12 comparison of the performance of the Freedom Funds
13 against the Freedom Index Funds?

14 A For the purposes of preparing my report, I
15 did not.

16 Q Okay. Aside from for purposes of
17 preparing your report, did you do that?

18 A I don't know how to answer that question.

19 Q Did you look at the performance of the
20 Fidelity Freedom Funds, what the complaint calls the
21 Active suite, and compare that to the performance of
22 the Freedom Index Funds, what the complaint calls
23 the Index suite?

24 A Again, for the purpose of preparing my
25 report, I did not.

1 Q Okay. Aside from that, have you ever done
2 that?

3 A I don't know how to answer that question.

4 Q How about this, prior to --

5 A I don't know how to answer that question.
6 You've been asking all sorts of vague
7 questions that are not sort of based around my
8 report. You're saying thinking is analyzing, all
9 sorts of things fall under the umbrella of
10 analyzing.

11 We're here to talk about this report. And
12 so when you tell me thinking is analyzing and you
13 ask me about right now, I'm thinking about it.

14 Q Okay.

15 A That's your definition, not my definition.
16 I'm trying to give the most accurate answers that I
17 can and so that you're giving me some like let's look
18 at everything. Let's look at the entire world and say
19 is this possible. How does that affect your opinion?

20 My fan is on, does that affect your
21 opinion? Well, am I thinking about the fan being
22 on, yes, I'm thinking about the fan being on.

23 Does that have anything to do with my
24 report, no. But am I thinking about it, yes, I'm
25 thinking about it, yes. Is that analyzing it?

1 Well, I guess I've analyzed the fan.

2 Q Dr. Werner, before today, did you do any
3 analysis of the performance of the Fidelity Freedom
4 Funds that the complaint calls the Active suite
5 versus the Fidelity Index Freedom Funds, which the
6 complaint calls the Index suite?

7 A I did not.

8 Q Okay. Before today, did you do any
9 analysis comparing the performance of what the
10 complaint calls the Active suite against Vanguard
11 target-date funds?

12 A I did not.

13 Q Okay. You know the complaint identifies
14 several alternative target-date fund suites that the
15 plan should have offered instead of the Fidelity
16 Freedom Funds?

17 A I don't know that one way or the other as I
18 sit here today.

19 Q You don't remember what the complaint says
20 about that?

21 A I don't recall as I sit here today.

22 Q Do you have the complaint in front of you
23 still?

24 A I do. No, I don't. Hold on.

25 Q During the break, Dr. Werner, I believe we

1 removed the complaint that had the Exhibit 4 sticker
2 and added one that had the Exhibit 2 sticker.

3 A Okay.

4 Q Turn to Paragraph 47, if you would.

5 A Oh, Paragraph 47. Sorry. Okay.

6 Q Do you see that Paragraph 47 identifies
7 target-date funds from American Funds, J.P. Morgan,
8 T. Rowe Price and Vanguard?

9 A I believe that's correct.

10 Q Prior to today, did you do any analysis
11 comparing the performance of the Freedom Funds with
12 what the complaint calls the Active suite against
13 the Vanguard target-date funds?

14 A For the purposes of preparing my report, it
15 did not impact this analysis or this chart did not
16 impact my opinions.

17 Q I know you didn't do an analysis in your
18 report comparing the returns of the Fidelity Freedom
19 Funds against the Vanguard target-date funds or the
20 J.P. Morgan target-date funds or the T. Rowe
21 target-date funds; correct?

22 A I'm sorry, you lost me. What did you say?

23 Q Dr. Werner, in your report you don't do
24 any analysis comparing the performance of the
25 Fidelity Freedom Funds against the J.P. Morgan

1 target-date funds; correct?

2 A Within my report, that's correct.

3 Q Okay. In your report, you don't do any
4 analysis comparing the performance of the Fidelity
5 Freedom Funds against the T. Rowe target-date funds;
6 correct?

7 A I believe that's correct.

8 Q In your report you don't do any analysis
9 comparing the performance of the Fidelity Freedom
10 Funds against the Vanguard target-date funds; is
11 that correct?

12 A I believe that's correct.

13 Q In your report you don't calculate any
14 losses or damages associated with the performance of
15 the Fidelity Freedom Funds relative to the
16 J.P. Morgan target-date funds?

17 A Relative to the J.P. Morgan target-date
18 funds, I believe that's correct.

19 Q In your report you don't do any analysis
20 calculating any losses or damages comparing the
21 performance of the Fidelity Freedom Funds against
22 the T. Rowe price target-date funds; correct?

23 A I believe that's correct.

24 Q You also in your report do not do any
25 analysis comparing the performance of the Fidelity

1 Freedom Funds against the Vanguard target-date funds
2 for purposes of calculating any losses or damages?

3 A I believe that's correct.

4 Q Now, aside from what is contained in your
5 report, did you do any calculation of losses or
6 damages by comparing the performance of the Fidelity
7 Freedom Funds against the J.P. Morgan target-date
8 funds?

9 A I'm sorry, did you ask me about the American
10 Funds and the Fidelity Freedom Funds? I just want to
11 make sure that we're on the same page.

12 I'm sorry, what was your question?

13 Q My question, sir, was whether, aside from
14 what's contained in your report, you did any
15 calculation of losses or damages associated with the
16 Fidelity Freedom Funds in the plan relative to the
17 J.P. Morgan target-date funds?

18 A I assume by calculation you mean a
19 mathematical calculation? Outside of the realm of
20 me -- again, if you want to say calculation includes
21 thinking, I can look at this and say, I can compare
22 these two returns and I can calculate the difference.

23 Again, it did not impact -- I can do that.
24 It did not impact my report. So I don't know.

25 Is that -- when you say "calculate," do

1 you mean what normal people call calculating or do
2 you include, again, this sort of broad definition
3 where thinking is included in things like analysis?
4 I don't know if thinking is included in calculating
5 or not.

6 Q Okay, Dr. Werner. Let's use what you
7 understand most people think of as calculating.

8 A Okay.

9 Q Okay. Now can you answer my question?

10 A If you reask it, I can.

11 Q Aside from what's in your report, did you
12 do any calculation of losses or damages associated
13 with the Freedom Funds in the plan as compared to
14 the J.P. Morgan target-date funds?

15 A I did not.

16 Q Now, aside from what's in your report, did
17 you do any calculation of damages or losses
18 comparing the Fidelity Freedom Funds in the plan to
19 the T. Rowe target price funds?

20 A I did not.

21 Q Aside from what's in your report, did you
22 do any calculation of losses or damages comparing
23 the performance of the Vanguard target-date funds to
24 the Fidelity Freedom Funds that were in the plan?

25 A I did not.

1 Q We're looking at Paragraph 47 of the
2 complaint; correct?

3 A I believe so.

4 Q That has returns as of Q22016 all the way
5 through five-year returns Q22016; correct?

6 A I'm sorry, where are you looking? I'm not
7 seeing that.

8 Q Are you looking at Paragraph 47?

9 A I am.

10 Q Okay. So if you look at what is PDF
11 Page 23.

12 A PDF Page 23.

13 Q Just the start of the charts.

14 A Okay.

15 Q You see it says "Three-Year Annualized
16 Returns as of 2Q2016"?

17 A I do.

18 Q And then it has "Five-Year Annualized
19 returns as of Q22016"?

20 A Yes, that's what I see.

21 Q The time period that you analyzed in your
22 report is after this time period; correct?

23 A What do you mean "after this time period"?

24 Q After Q2 of 2016.

25 A After Q22016, let's go to my report.

1 Looking at Exhibit 3, I believe that's
2 correct. I should say that's Exhibit 3 to Exhibit 1
3 of this deposition, just for clarification.

4 Q Dr. Werner, you're referring to Exhibit 3
5 to your report?

6 A Exhibit 3 to Exhibit 1 of this deposition,
7 correct.

8 Q Got it. Thank you.

9 Is there a reason that you did not
10 calculate any potential losses or damages by
11 comparing the performance of the Fidelity Freedom
12 Funds to the J.P. Morgan, T. Rowe Price or Vanguard
13 target-date funds or Fidelity Index target-date
14 funds?

15 A Can you repeat the question, please?

16 Q Is there a reason that you did not
17 calculate any losses or damages by comparing the
18 performance of the Fidelity Freedom Funds to the
19 J.P. Morgan, T. Rowe Price, Vanguard or Fidelity
20 Freedom Index target-date funds?

21 A That was not something I was asked to do, so
22 it's outside the scope of my report.

23 Q In your report, Dr. Werner, you don't
24 offer any opinion about the fiduciary process that
25 was utilized by the Quanta plan fiduciaries in this

1 case; correct?

2 A That was outside the scope of my report.

3 Q Okay. Do you consider yourself to be an
4 expert in connection with the fiduciary process used
5 by plan fiduciaries when selecting and monitoring
6 investment options?

7 A I don't believe that's something I've been
8 retained to do in this case.

9 Q Putting aside this case, do you consider
10 yourself to be an expert in that?

11 A In the common parlance of expert, so not
12 within your -- what you might consider an expert,
13 let's just go with the average person considers an
14 expert, I don't believe so.

15 Q You also offer some opinions on the
16 American Beacon Small Cap Value Fund; correct?

17 A I believe that is correct.

18 Q Okay. In connection with your report, did
19 you analyze the risk, fees, investment holdings or
20 investment strategy of the American Beacon Small Cap
21 Value Fund?

22 A That was not something I was asked to do.

23 Q So you did not?

24 A I've only done what I was asked to do. Yes,
25 by tautology, your statement is correct.

1 Q Did you analyze whether the American
2 Beacon Small Cap Value Fund was a reasonable or
3 appropriate investment option in 2019 or 2020?

4 A That was not something I was asked to do for
5 this report.

6 Q Is it something you think you would be
7 qualified to do as an expert?

8 A Could you reread the question, please?
9 (Requested testimony read by the reporter.)

10 THE WITNESS: Now you're asking me is that
11 something I'm qualified to do?

12 BY MR. BLUMENFELD:

13 Q Correct.

14 A That's not anything I've ever given any
15 thought to.

16 Q As you sit here today at least, you don't
17 consider yourself to be an expert in doing that sort
18 of work?

19 A I believe that is correct.

20 But I'm sorry, there's so many questions
21 here, can you reread the original question, then
22 I'll think about it in terms of whether or not I
23 believe I'm qualified to do that.

24 (Requested testimony read by the reporter.)

25 THE WITNESS: That's not something I was

1 asked to do for this report. Am I qualified to do
2 it, I don't know. Again, qualified by who?

3 BY MR. BLUMENFELD:

4 Q Do you consider yourself qualified to do
5 that?

6 A That's not anything anyone has asked me to
7 do.

8 Q Okay. Can you answer my question?

9 A Do I -- so why don't you just ask me the
10 question, am I qualified to do what?

11 Q Do you consider yourself qualified to
12 analyze whether the American Beacon Small Cap Value
13 Fund was a reasonable or appropriate investment
14 option in 2019 or 2020?

15 A So beyond -- I mean, I don't know how to
16 answer that. I have a Ph.D. in finance, I've taught
17 finance.

18 Qualified according to who? According to
19 me? I don't know how to answer that question.

20 Q I said qualified according to you.

21 A I don't know how to answer that question.
22 That's not anything I've ever thought about prior to
23 you asking about it.

24 Q As you sit here today at least, you don't
25 qualify yourself qualified to offer opinions on

1 whether the American Beacon Small Cap Value Fund was
2 a reasonable or appropriate investment option in
3 2019 or 2020?

4 MR. TANG: Misstates prior testimony.

5 THE WITNESS: I defer to my previous
6 answer. I don't believe that's what I said.

7 BY MR. BLUMENFELD:

8 Q Tell me what you did say because I thought
9 you did.

10 THE WITNESS: Could you reread my previous
11 answer, please?

12 (Requested testimony read by the reporter.)

13 THE WITNESS: I still don't know how to
14 answer that question.

15 BY MR. BLUMENFELD:

16 Q And to be clear, I'm saying: Do you
17 consider yourself to be qualified?

18 MR. TANG: Asked and answered.

19 THE WITNESS: What does that mean? Do I
20 consider myself to be qualified? I don't understand
21 that. Qualified with regards to who?

22 BY MR. BLUMENFELD:

23 Q Do you consider yourself qualified to
24 offer expert opinion on damages and losses in this
25 case?

1 A I do.

2 Q Do you consider yourself qualified to be
3 able to offer opinions on whether the American
4 Beacon Small Cap Value Fund was a reasonable or
5 appropriate investment option for the Quanta plan in
6 2019 or 2020?

7 A So that's not anything I've ever thought
8 about prior to you asking me that question. So I
9 don't know how to answer it.

10 Q You also offer opinions in your report on
11 the Janus Henderson Small Cap Value Fund; correct?

12 A That's correct.

13 Q Did you analyze the risks, fees,
14 investment holdings, investment strategy of the
15 Janus Henderson Small Cap Value Fund?

16 A That was not something I was asked to do for
17 the purposes of submitting my report.

18 Q You offer in your report opinions on the
19 DFA International Small Cap Value Fund; correct?

20 A Correct.

21 Q Did you analyze the risks, fees,
22 investment holdings or investment strategy of the
23 DFA International Small Cap Value Fund?

24 A That was not something I was asked to do in
25 submitting this report.

1 Q So you did not?

2 A That was not something I was asked to do for
3 the purposes of submitting my report.

4 Q And you only did the things that you were
5 asked to do?

6 A Well, let's go back to what my assignment
7 was.

8 So going back to Paragraph 1 of Exhibit 1
9 to this deposition, "I was asked by Miller Shah,
10 counsel for the Plaintiffs in the above-captioned
11 litigation against Quanta Services Incorporated
12 ('Quanta' or 'Defendant') to apply a common damages
13 methodology and provide an estimate of losses of the
14 Quanta Services Incorporated 401(k) Savings Plan
15 (the 'Plan') attributable to Class members who
16 participated in the Plan at any time on or after
17 September 26th, 2016."

18 Q Did you analyze the risks, fees,
19 investment holdings or investment strategy of the
20 DFA International Small Cap Value Fund?

21 A That was not something I was asked to do for
22 purposes of providing my report in this case.

23 Q I'm not asking what you were asked to do.
24 I'm asking whether you did it or not.

25 Whether it was asked of you or not, did

1 you do it?

2 A I completed my assignment as I stated it to
3 you. But I mean, I can reread Paragraph 1. That was
4 my assignment. That's what I did.

5 Q So things that aren't in your list of what
6 you were assigned to do, you did not do?

7 A If I was not asked to do something, I did
8 not do it.

9 Q And the only thing you were asked to do is
10 contained in Paragraph I?

11 A I believe that's correct as of this date,
12 yes.

13 Q You offer in your report opinions on the
14 Schwab Fundamental International Small Cap Equity
15 Index Fund; correct?

16 A I believe that's correct.

17 Q Okay. Did you analyze the risks, fees,
18 investment holdings or investment strategy of the
19 Schwab Fundamental International Small Cap Equity
20 Index Fund?

21 A That was not something I was asked to do.

22 Q Because you weren't asked to do it, you
23 did not do it?

24 A By definition, I believe that's correct.

25 Q Have you ever served as an investment

1 consultant to any ERISA plans?

2 A No.

3 Q Have you ever served as a fiduciary for
4 any ERISA plans?

5 A No.

6 Q Have you ever served as an investment
7 consultant for any non-ERISA plans?

8 A I don't believe so.

9 Q Have you ever served as a fiduciary for
10 any non-ERISA plans?

11 A No.

12 Q In Paragraph 1 of your report, you say
13 that you were asked to apply a common damages
14 methodology?

15 A Correct.

16 Q What do you mean by that?

17 A A damage methodology common to all
18 plaintiffs.

19 Q How do you know that the damages
20 methodology you applied is a common one to all
21 plaintiffs?

22 A There is no other reason for me to --

23 Q Maybe I misunderstood.

24 Did you finish your answer, Dr. Werner?

25 A Go ahead, I'm sorry, I guess I don't

1 understand what you're asking.

2 Q When you say "common damages methodology,"
3 you're referring to common as among all of the
4 participants in the Quanta plan?

5 A A methodology that could be used to
6 calculate damages for all people in the plan, yes.

7 Q You're not referring to a damages
8 methodology that is common among plaintiffs in ERISA
9 litigation class actions?

10 A I don't -- I've not -- that's not something
11 I've thought about as I sit here today.

12 Q You don't know whether your damages
13 methodology is used by anybody else in any other
14 cases?

15 A I mean, I used a -- I haven't looked at it
16 in awhile. I used a similar methodology, to the best
17 of my recollection, in the Genworth matter.

18 I've seen other reports from other experts
19 in other cases that have applied similar
20 methodologies to the ones I've used here.

21 Q What other cases?

22 A As I sit here today, I cannot recall.

23 Q You cannot identify any of the other cases
24 where somebody else has used a methodology that's
25 similar to what you used in this case?

1 A Correct.

2 Q And just to be clear, when you said in
3 Paragraph 1 that you were asked to apply a common
4 damages methodology, you were referring to common as
5 among all the participants in the Quanta plan, not
6 common that this is the way others would calculate
7 damages in a similar circumstance?

8 A I don't think that's what I said.

9 Q Okay. Correct me then.

10 A I defer to my previous answer. It's just --
11 I mean, I don't want to say this is a common sentence
12 that I submitted on my -- many of my reports, but I'm
13 not sure what the misunderstanding about this is.

14 Q Well, you say in Paragraph 1 that you were
15 asked to apply a common damages methodology;
16 correct?

17 A That's correct.

18 Q I'm trying to understand what you meant by
19 that. How about that, tell me what you mean by
20 that.

21 A I don't know why I'm having problems with
22 this, but I just -- it's the way I would normally use
23 it. It's a methodology that can be used.

24 Q And you said it's similar to the
25 methodology you used in the Genworth case; correct?

1 A That's correct, and as I also stated,
2 similar to the methodology I've seen used in other
3 cases.

4 Q Right. But you can't identify any other
5 cases where that similar methodology has been used
6 aside from by you?

7 A That's correct.

8 Q Are there portions of your opinion in your
9 report where you believe you've exercised judgment?

10 A Well, I mean, yes, I developed the model --
11 looking at Footnote 4 to my report, it points to some
12 places where I actually make -- where I make use of
13 judgment.

14 So I guess the answer to your question is
15 yes.

16 Q Aside from Footnote 4?

17 A Well, that wasn't my only answer, was it?

18 Q You said you developed the model?

19 A Right.

20 Q And --

21 A But that's not contained in Footnote 4.

22 Q And developing the model you believe
23 required you to exercise judgment?

24 A Yes.

25 Q Anyplace else?

1 A As I sit here today, I don't know. I can't
2 think of anything else.

3 Is that true? I don't know that that's
4 true.

5 So I developed the model, I had to make
6 some assumptions about funds with regards to the
7 assumptions I made with regards to Footnote 4. Is
8 there anything else?

9 I chose not to include the prejudgment
10 interest in my calculation.

11 (Reporter clarification.)

12 THE WITNESS: I would guess that's a
13 judgment call.

14 I don't recall whether or not that was
15 something I was told to do or determined on my own.
16 So I would have to think more about that.

17 BY MR. BLUMENFELD:

18 Q Am I correct, Dr. Werner, you don't
19 remember as you sit here today whether you decided
20 not to include prejudgment interest in your
21 calculation or whether you were told to do that by
22 plaintiff's counsel?

23 A That's correct. I believe I was told to by
24 plaintiff's counsel, but I don't know as I sit here
25 today.

1 Q Okay. You could have included prejudgment
2 interest in your calculations if you wanted to and
3 you were given the direction to do so?

4 A Hold on one second. So I'm sorry, could you
5 reask your question?

6 Q You could have included prejudgment
7 interest in your calculations; correct?

8 A Is it possible? It's possible I could have
9 done that, yes.

10 Q You did not and you don't remember whether
11 you did not because you decided not to or because
12 plaintiffs counsel told you not to; correct?

13 A As I sit here today, I don't recall.

14 Q Okay. Either way, it was a choice either
15 by you or plaintiff's counsel that led to you not
16 including prejudgment interest in your report?

17 A That's correct.

18 Q Could you turn to Paragraph 2 of your
19 report?

20 A Okay.

21 Q In Paragraph 2 of your report, you say, "I
22 understand that as an expert witness in this
23 proceeding, my duty in providing my Report is to the
24 Court and that this duty overrides any obligation to
25 the parties who have engaged me, from whom I have

1 received instructions or compensation. I confirm
2 that I have complied with this duty."

3 Did I read that correctly?

4 A That's correct.

5 Q And you believe that that is true?

6 A I do.

7 Q Okay. What do you understand your duty to
8 the court is?

9 A My duty is to provide a report.

10 Q That's it?

11 A In my understanding of the word "duty," yes.
12 I understand I have to tell the truth. I don't know
13 if that's included under your definition of duty.

14 So my understanding of duty is that my
15 duty is provide an independent report to the court.

16 Q As far as you're concerned, the obligation
17 that you believe you have under Paragraph 2 as you
18 describe it is to provide an independent report to
19 the court?

20 A To provide a report.

21 Q It does not have to be independent?

22 A Look, I mean, I don't know why this is some
23 kind of controversial statement. If you want to
24 include things like -- I mean, let's go up to my --
25 the beginning of my report.

1 "I declare and state under penalty of
2 perjury that the following is true and correct to
3 the best of my knowledge, information and belief.
4 If called to testify, I could and would testify
5 competently to the following facts."

6 Is that included under duty? I don't
7 know. But if you want to include that as part of
8 duty, I believe that's also my duty.

9 Q You wrote Paragraph 2; correct?

10 A I did.

11 Q Okay. What I'm trying to understand, sir,
12 is what you meant when you wrote Paragraph 2?

13 A I just meant the common use term of the word
14 "duty."

15 Q Which is to provide a report?

16 A Well, I mean, since we're getting -- I mean,
17 I also again -- yes, it's to provide a report but in
18 doing so, right, I have -- I declare and state under
19 penalty of perjury that the following is true and
20 correct to the best of my knowledge, information and
21 belief.

22 Is that a duty? I don't know. It's what
23 I've done, so I don't know -- I mean, do I consider
24 that part of the duty? I don't know how to answer
25 that question. That's not anything that anyone's

1 ever asked me before.

2 Q Okay.

3 A In the over 50 depositions I've given.

4 Q You include this paragraph -- do you
5 include this paragraph in all of your reports?

6 A Which paragraph?

7 Q Paragraph 2 that I have been asking you
8 about and you've been answering about.

9 A So not the declaration at the beginning, I
10 believe that is true.

11 Q And do you believe that part of your duty
12 as reflected in Paragraph 2 is to be -- to have a
13 duty of candor to the court?

14 A Candor -- well, I think that falls under
15 true and correct.

16 Q Okay. And you believe that your report in
17 this case complies with whatever duty you believe
18 you have?

19 A I believe that's correct.

20 Q Do you believe that your duty of candor --
21 excuse me, let me restate that question.

22 Do you believe that the duty reflected in
23 Paragraph 2 also includes a duty to include all of
24 the assumptions that you make in connection with
25 your report?

1 A I believe that's correct.

2 Q Do you believe that the duty you have in
3 Paragraph 2 also includes a duty not to hide things
4 in your report or the supporting materials?

5 A What do you mean by "hide things"?

6 Q The common understanding of the word
7 "hide."

8 A Why don't you tell me what the common
9 understanding of hide is. Like hide and go seek? You
10 define hide for me and then I'll answer the question.
11 I don't know what the common definition --

12 Q How would you define hide?

13 A I don't know how to define it. In what
14 context? You're using the term, so explain to me what
15 you mean.

16 Q Okay. Do you understand, sir, that you
17 have a duty, as reflected in Paragraph 2, not to
18 obfuscate information from the court?

19 A What do you mean by "obfuscate information
20 from the court"?

21 Q You don't know what that means?

22 A No, your question, I don't understand what
23 you mean by your question.

24 Q Okay. That's fine.

25 Do you understand that your duty as

1 reflected in Paragraph 2 includes a duty not to
2 misrepresent things in your report?

3 A What do you mean by "misrepresent"?

4 Q You're not sure what the word
5 "misrepresent" means?

6 A I don't know what you mean by the term
7 "misrepresent."

8 Q Okay. Do you have an understanding of
9 what the term "misrepresent" means?

10 A I believe I do.

11 Q Using your understanding of what the term
12 "misrepresent" means, do you believe that the duty
13 you described in your report, Paragraph 2, includes
14 a duty not to misrepresent things?

15 A Again, that's -- that's not anything I've
16 ever been asked before in over 50 depositions. I
17 mean, do I have a duty to do that, I guess so. I
18 don't know.

19 I mean, why don't you tell me what you
20 mean by misrepresent and then I'll try to answer
21 your question.

22 Q That's okay. I think your answers are
23 pretty clear.

24 I have a question for you about Exhibits 3
25 through 8 in your report.

1 A Okay.

2 Q Can you turn to Exhibit 3 to start?

3 A Yes, I'm there.

4 Q Okay. This is a PDF copy of a
5 spreadsheet; correct?

6 A That's correct.

7 Q And you provided the spreadsheet in
8 connection with the backup materials that you
9 provided to us?

10 A I believe that's correct.

11 Q The spreadsheet itself was a live
12 spreadsheet that you provided; in other words, it
13 has the numbers in it and it calculates things based
14 on those numbers; correct?

15 A So you mean the Excel spreadsheet?

16 Q Yes.

17 A Correct.

18 Q And it's the Excel spreadsheet itself that
19 you used to calculate the losses that you describe
20 in your report and then you printed a more legible
21 version of that as a PDF to include as Exhibits 3
22 through 8 of your report; correct?

23 A We can argue about legible, but I believe
24 that's correct.

25 Q Okay. And the way that the actual

1 spreadsheets operate that you provided to us as the
2 backup materials, you could change some of the
3 inputs and it would change the outputs that it
4 was -- it would change the damages or losses if you
5 change the inputs; correct?

6 A That's correct.

7 Q Exhibit 3 in particular, did you
8 personally type this information in?

9 A I did not.

10 Q Who did?

11 A I believe -- I mean, I don't know --
12 alexander Huang would have been in charge of that. I
13 don't know if he actually went in and typed in each
14 one of these numbers.

15 My guess is that's what happened. But I
16 don't know as I sit here today.

17 Q Okay. You're not sure if he did it or if
18 somebody else did it and gave it to him?

19 A I'm pretty sure he did it.

20 Q Okay. Did you do any comparison of the
21 information that is in Exhibit 3 compared to the
22 underlying documents?

23 A I did not.

24 Q Let's switch to Exhibit 4, which is the
25 next page of your report.

1 A Okay.

2 Q Is this information that you personally
3 typed in to Exhibit 4?

4 A It is not. That's going to be -- I'm sorry,
5 I'll stick with that. I did not.

6 Q Okay. Did you do anything to validate
7 whether the information contained in Exhibit 4 was
8 correct or not correct?

9 A I did not. When I'm answering that, I mean
10 I personally did not do that.

11 Q Right. Somebody on your team might have
12 done that?

13 A Correct.

14 Q Do you know if somebody on your team did
15 it?

16 A I don't know as I sit here today. I would
17 be surprised if they did not.

18 Q Can we go back to the assumptions that are
19 in Paragraph 1, A, B and C.

20 A Okay.

21 Q So if the assumptions that are derived in
22 A, B and C turn out not to be correct, then the
23 analysis of claimed losses would also have to
24 change; correct?

25 A So I'm sorry, could you reread the question,

1 please?

2 (Requested testimony read by the reporter.)

3 THE WITNESS: What do you mean by

4 "correct"? Correct according to who, the court?

5 Who am I -- who are you referring to?

6 BY MR. BLUMENFELD:

7 Q Well, let's start with the court.

8 If the court says that the assumptions
9 that are contained in Paragraph 1A of your report
10 are not correct, then the conclusions that you
11 reached based on those assumptions would have to be
12 changed; correct?

13 A I believe that's correct.

14 Q The same with the assumptions that are
15 listed in 1B?

16 A I believe that's correct.

17 Q And the same with the assumptions that are
18 in 1C?

19 A I believe that's correct.

20 Q And if plaintiffs came to you and said, we
21 want you to change the assumptions, then the
22 conclusions that you reached in your report also
23 would have to change; correct?

24 A I believe that's correct.

25 Q Did you also assume that aside from the

1 changes that are listed in A, B and C of Paragraph 1
2 that the plan otherwise would be managed in exactly
3 the same way it was and would still have exactly the
4 same investments that it otherwise had?

5 A Can you reread that question, please?

6 (Requested testimony read by the reporter.)

7 MR. TANG: Object to form.

8 THE WITNESS: What do you mean by
9 "changed"?

10 BY MR. BLUMENFELD:

11 Q Well, in Paragraph 1A, you describe
12 changing from the Fidelity Freedom Funds target-date
13 suites to the American Funds; correct?

14 A I'm sorry, can you reread that question?

15 Q Let me restate it.

16 In Paragraph 1A of your report, you say
17 you were asked to assume that the plan fiduciary
18 should have replaced the Fidelity Freedom
19 target-date suite with the American Funds; correct?

20 A Okay. You mean -- that's correct.

21 Q And in Paragraph 1B, you say you were
22 asked to assume that the fiduciaries should have
23 replaced the American Beacon Fund with the Janus
24 Henderson Small Cap Value End Fund?

25 A That's correct.

1 Q In Paragraph 1C, you say that you were
2 asked to assume that the DFA fund was replaced with
3 the Schwab Fundamental International Small Cap
4 Equity Index?

5 A The DFA International small cap value, yes,
6 that's correct, or Value 1.

7 Q Aside from those three changes, you
8 assumed that the plan otherwise was going to be
9 operated in exactly the way it was; correct?

10 A That's actually an interesting question.
11 That is not something I really thought about.

12 I believe what you said is correct, but I
13 need to think about it more to give you a precise
14 answer.

15 Q At least for purposes of your report, the
16 only changes that you assumed would be made to the
17 plan were those in 1A, B and C?

18 A I believe that is correct.

19 Q Okay.

20 MR. BLUMENFELD: Sam, fair warning, can
21 you upload the Beacon and DFA Excel spreadsheet?

22 (Whereupon, Exhibit 3 was marked for
23 identification.)

24 BY MR. BLUMENFELD:

25 Q While he's doing that, Dr. Werner, I have

1 a question for you about Paragraph 17 of your
2 report.

3 A Okay.

4 Q Do you have that in front of you?

5 A I do.

6 Q In Paragraph 17, you say that "Assuming
7 that Quanta should have replaced the Fidelity
8 Freedom TDFs with the American Fund TDFs as of
9 Q12017, the American Beacon Fund with the Janus
10 Henderson Small Cap Value N as of Q12020, and the
11 DFA Fund with the Schwab Fundamental International
12 Small Cap Equity Index as of Q12020, the Plan's
13 aggregate losses amount to \$20,139,166 as of
14 June 30, 2024." Correct?

15 A Excluding prejudgment interest, correct,
16 yes.

17 Q Then you add, "excluding prejudgment
18 interest."

19 You calculate those losses to the dollar;
20 right?

21 A What do you mean?

22 Q The precise calculation, it's not --
23 you're not saying that the losses are \$20 million or
24 \$25 million or \$19 million, you're saying
25 \$20,139,166?

1 A Excluding prejudgment interest, correct.

2 Q Now, you calculate losses with respect to
3 the Fidelity Freedom TDFs of \$20,139,166 itself;
4 correct?

5 A That's correct.

6 Q For the American Beacon and DFA funds, you
7 actually calculate negative losses; correct?

8 A I believe that is correct.

9 Q Well, why don't we see if that's ready to
10 download now. It should be there.

11 A Okay. Let's see.

12 Okay. I'm there.

13 Q Do you have it open?

14 A I do.

15 Q Can you turn to the "Beacon Losses" tab in
16 your backup materials?

17 A Okay. I'm there.

18 Q Okay. Now, first, you don't include any
19 of these sorts of materials in your actual report
20 like you do with respect to the Fidelity Freedom
21 Funds; correct?

22 A I'm sorry, I don't understand the question.

23 Q With respect to the Fidelity Freedom
24 Funds, you include Exhibits 3 through 8 which show
25 some of the calculations; right?

1 A Correct.

2 Q But you don't do that with respect to the
3 American Beacon and DFA funds?

4 A That's correct.

5 Q Okay. Now, if I'm understanding
6 correctly -- and we'll walk through this in a little
7 bit more detail -- but you calculate losses of
8 negative \$3,147,203 with respect to the American
9 Beacon fund as of June 30th, 2024; correct?

10 A Excluding prejudgment interest, correct.

11 Q Right. And you don't, when you then total
12 up the changes in Paragraph 17, account for that
13 negative \$3,147,203; correct?

14 A I'm sorry, what was your question?

15 Q In Paragraph 17 of your report --

16 A Right.

17 Q -- you ignore the negative \$3,147,203 from
18 your calculations of the total?

19 A Do I net out? I guess I don't know how to
20 answer the question.

21 Damages according to this are zero, so
22 that's what the damages were. If you tell me -- if
23 there is a different theory of liability and someone
24 tells me that we need to look at net damages or I
25 need to do a different calculation, then I might

1 revisit this.

2 But my understanding is that that is a
3 legal question, not an economic one.

4 Q Were you asked to make an assumption about
5 that?

6 A I don't know as I sit here today.

7 Q You don't include an assumption about that
8 in your list of assumptions; correct?

9 A I don't believe so.

10 Q In Paragraph 17, one of the things you're
11 specifically assuming is that Quantum would have
12 replaced the American Beacon fund with the Janus
13 Henderson small cap value N?

14 A That's correct.

15 Q And had the plan done that, the plan would
16 have been worse off to the tune of \$3,147,203?

17 A The fund would have been worse off -- I
18 don't believe that's correct.

19 Q If the plan had replaced the American
20 Beacon fund with the Janus fund as of January 1 of
21 2020, as you were asked to assume, the plan would
22 have 3 million fewer dollars in it; correct?

23 A I don't believe that -- I don't believe
24 that's correct.

25 Q Tell me what's wrong about that.

1 A I believe it would have -- it would have
2 3 million -- approximately \$3 million more in the
3 fund, not less. Maybe I'm just doing the math wrong.
4 Maybe I'm misunderstanding.

5 Q Let's be clear about this, Dr. Werner. Do
6 you want to write it down so you can figure it out?

7 A Well, I just -- I don't think what you said
8 is correct.

9 Q I understand, that's fine. I want to make
10 sure we get it right.

11 But you calculate negative damages;
12 correct?

13 A Correct.

14 Q Negative \$3,147,203?

15 A Right. So a negative damage would be a
16 benefit.

17 Q Okay.

18 A At least theoretically.

19 Q Let me ask the question this way: When
20 you say a benefit, you mean that the plan is better
21 off in the American Beacon fund that it actually had
22 than it would have been in the alternative Janus
23 fund that you were asked to assume?

24 A I see what you're saying, yes.

25 Q Okay. And so had the plan made the change

1 that you were asked to assume it was going to make,
2 the plan would have 3,147,203 fewer dollars as of
3 June 30, 2024 than it actually has?

4 A That's correct.

5 Q But you don't account for that in
6 Paragraph 17?

7 A Again, I think that is a legal question, not
8 an economic one.

9 Q You don't have an opinion one way or the
10 other as to whether the \$3,147,203 should be
11 accounted for or not?

12 A I believe that your statement is correct.

13 Q Okay. As an economics matter, though, you
14 would agree with me that had the plan made the
15 change that you were asked to assume it would make,
16 the plan would have 3,147,203 fewer dollars than it
17 actually has?

18 A As an economic matter, that's correct.

19 Q Okay. Can we go to the spreadsheet, the
20 worksheet that's entitled "DFA Losses."

21 A Okay.

22 Q And at least on my copy of that,
23 Dr. Werner, those are in green as opposed to the
24 Beacon ones that are in blue. Is that the same for
25 yours?

1 A It is.

2 Q Okay. And you also calculate negative
3 damages with respect to the DFA fund. This time the
4 number is negative \$834,969; correct?

5 A That's correct.

6 Q Meaning had the plan made the change that
7 plaintiffs asked you to assume it should have made,
8 the plan would be worse off to the tune of \$834,969?

9 A That's correct.

10 Q You don't account for that in Paragraph 17
11 of your report either?

12 A Again, I believe that's a legal issue.

13 Q That's fine.

14 A I'm not a lawyer.

15 Q Let's go back to the American Beacon fund.

16 Dr. Werner, I apologize, I lost track of
17 time a little bit. I know we took some breaks early
18 on. I don't know if it's been about an hour or if
19 you would like to take a break now or keep going,
20 it's up to you.

21 A You know, why don't we take a ten-minute
22 break; is that okay?

23 Q That's fine by me?

24 A Thank you for offering that.

25 Q Okay.

1 A Or reminding me.

2 THE VIDEOGRAPHER: Stand by. This marks
3 the end of Media Number 3. Going off the record at
4 11:41 a.m. Pacific.

5 (Recess taken.)

6 THE VIDEOGRAPHER: We are back on the
7 record at 11:52 a.m. Pacific. And this marks the
8 beginning of Media Number 4 in the deposition of
9 Dr. Adam Werner.

10 Please proceed, counsel.

11 MR. BLUMENFELD: Am I still sharing my
12 screen?

13 THE VIDEOGRAPHER: Yes, you are.

14 THE WITNESS: It appears so. I see the
15 spreadsheet.

16 MR. BLUMENFELD: Great. Is that being
17 recorded on the video, Brandon?

18 THE VIDEOGRAPHER: Yes, it is. I -- yes,
19 it's both. It's the witness in a smaller view
20 screen.

21 MR. BLUMENFELD: Perfect. Thank you very
22 much. And thank you, Dr. Werner.

23 THE WITNESS: Sure.

24 BY MR. BLUMENFELD:

25 Q Do you understand we're back on the record

1 and you're still under oath?

2 A I do.

3 Q You have the same obligation to tell the
4 truth as if you were testifying live in front of a
5 judge or jury?

6 A I do.

7 Q This is your backup spreadsheet for the
8 Beacon and DFA funds; correct, Exhibit 3?

9 A Correct, or at least it appears to be. I
10 have no reason to think it's not.

11 Q And the tab that we're focused on now is
12 entitled "Beacon Losses."

13 Do you see that?

14 A I do.

15 Q And that's the tab that runs through all
16 of the calculations that yield the -- your
17 conclusion that the plan would have been better off
18 in the American Beacon fund that was in the plan as
19 compared to the Janus Henderson fund by \$3,147,203;
20 correct?

21 A Economically, that's correct.

22 Q Can we go to the "Beacon Balances" tab
23 first. And there is a bunch of numbers here. These
24 are numbers that were input by somebody on your
25 team; correct?

1 A Correct.

2 Q My understanding from your report is that
3 they got the information from the quarterly
4 investment reviews?

5 A Why don't we pull up my report. Oh, I'm
6 sorry, yes, I believe that's correct.

7 Q Okay. Did you personally look at any of
8 the quarterly investment reviews?

9 A I did not.

10 Q Okay. Just while we're on the subject, on
11 Page 18 of your report --

12 A Hold on. Yes. Page 18.

13 Q It continues to the top of Page 19.

14 A Okay.

15 Q Did you look at any of these documents in
16 preparing your report?

17 A I did look at the complaint. Did I look --
18 I don't -- as I sit here, I don't recall.

19 Q Okay. You did not look at the quarterly
20 investment reviews, but you might have looked at
21 some other documents?

22 A Correct.

23 Q And you're just not sure?

24 A Correct.

25 Q It also says that you relied on

1 Morningstar Direct data?

2 A That's correct.

3 Q Is that data that you personally pulled?

4 A I did not personally pull that data.

5 Q Okay. Do you know who did?

6 A It's either Alex -- Alexander Huang or
7 someone in Italy.

8 Q Got it. Thank you.

9 Switching gears back to Exhibit 3 to your
10 deposition, which is the backup materials for the
11 American Beacon and DFA fund.

12 The way the spreadsheet works, if you
13 change the quarterly balance numbers, that would
14 change the result in the "Beacon Losses" tab;
15 correct?

16 A I believe that's correct.

17 Q Okay. And am I right that you calculated
18 losses assuming that the change from the American
19 Beacon fund to the replacement fund occurred on
20 January 1 of 2020?

21 A On January 1 of 2020. I believe that's
22 correct. Let me just look at my report. Hold on.

23 Q Sure.

24 A Yes, I believe that's correct.

25 Q The same with the DFA fund; correct?

1 A Correct.

2 Q Okay. Getting back to Deposition
3 Exhibit 3, your backup materials on the American
4 Beacon and DFA funds, if you go to the "Beacon
5 Losses" tab.

6 A Okay.

7 Q As of March 31 of 2020, you calculated
8 losses of \$942,080; correct?

9 A Correct.

10 Q Meaning as of that date, the plan would
11 have been better off in the Janus fund as compared
12 to the American Beacon fund by \$942,080?

13 A Correct.

14 Q And then the next quarter that number goes
15 down to \$225,257; correct?

16 A Correct.

17 Q I guess that means that during that
18 three-month time period, the American Beacon fund
19 did better than the Janus Henderson fund?

20 A That would be my assumption.

21 Q Okay. And then the next quarter after
22 that by September 30th, the damages start to go
23 negative, meaning the plan was better off in the
24 American Beacon fund than it would have been in the
25 Janus fund that you were asked to assume as a

1 replacement; correct?

2 A That's correct. Hold on one second. I'm
3 just looking at my copy of the spreadsheet that you're
4 looking at. I just wanted to...

5 Okay. Go ahead. I'm sorry.

6 Q That's okay.

7 Dr. Werner, just so I'm clear, when you
8 said you were going to look at your copy, you're
9 looking at the copy you downloaded from our Exhibit
10 Share?

11 A That's correct.

12 Q Okay. If I'm understanding this
13 correctly, when you calculate damages of \$942,080 as
14 of March 31 of 2020, what that really means is if
15 the plan had stopped investing in the American
16 Beacon fund as of, I'll call it, April 1st of 2020,
17 then you would have calculated losses of \$942,080;
18 correct?

19 A That's correct.

20 Q The reason that the losses then fluctuate
21 is because the plan continued to be invested in the
22 American Beacon fund and so you can continue to run
23 the analysis?

24 A Correct.

25 Q Okay. And if the plan had replaced the

1 American Beacon fund with some other fund as of
2 June 30 of 2020, your opinion in this case would be
3 that the losses were \$225,257 plus prejudgment
4 interest; correct?

5 A Could you repeat that question?

6 Q I'll try.

7 If the plan had replaced the American
8 Beacon fund with some other fund as of June 30 of
9 2020, then you would have calculated losses
10 associated with the failure to offer the Janus fund
11 instead of the American Beacon fund of \$225,257?

12 A Okay. So I think where I'm getting confused
13 is that at the beginning of your statement, you don't
14 mention the Janus Henderson fund as the replacement
15 fund. I think you just say a general replacement
16 fund?

17 Q Correct.

18 A So I am a little confused by the question.

19 Q Let me ask it this way: If -- let's stick
20 to that first quarter.

21 If on April 1 of 2020, the American Beacon
22 fund was removed from the plan, the plan would have
23 suffered losses, under your methodology, of
24 \$942,080; correct?

25 A Correct.

1 Q Those would be the losses associated with
2 the American Beacon fund?

3 A Correct, relative to the Janus Henderson
4 Small Cap Value Fund.

5 Q And if the plan had offered the XYZ fund
6 instead of the American Beacon fund as of April 1 of
7 2020, you could evaluate the performance of the
8 XYZ fund compared to the Janus fund or anything
9 else, but those would be losses associated with the
10 XYZ fund, not associated with the American Beacon
11 fund?

12 A Could you restate your question?

13 Q Sure.

14 Once the American Beacon fund is removed
15 from the plan, there wouldn't be any more losses
16 associated with the American Beacon after that;
17 correct?

18 A That's correct.

19 Q Okay.

20 A I believe that's correct.

21 Q Okay. Let's go to the DFA fund, "DFA
22 Balances" tab on Exhibit 3.

23 Do you see that in front of you?

24 A I do.

25 Q And this works the same way as you did

1 with respect to the American Beacon fund; correct?

2 A That's correct.

3 Q And these are the balances in the DFA fund
4 quarter by quarter?

5 A Correct.

6 Q If we go -- this always messes me up
7 because I had trouble finding all the tabs, but if
8 you go to the "DFA Losses" tab of your worksheet.

9 A Okay.

10 Q Are you there?

11 A You're there.

12 Q As of June 30 of 2024, you calculated
13 negative losses of \$834,969; correct?

14 A Correct.

15 Q And similarly, as with respect to the
16 American Beacon fund, as of March 31 of 2020 at
17 least, you calculate damages of \$118,517; correct?

18 A Correct.

19 Q And so if the plan had removed the DFA
20 fund as of April 1 of 2020, then the damages
21 associated with the DFA fund would have been
22 \$118,517; correct?

23 A As of that date, that's correct.

24 Q If whatever was replacing the DFA fund did
25 better or worse than the Schwab fund, there would be

1 damages or no damages but those wouldn't be damages
2 associated with the DFA fund; correct?

3 A I believe that is correct. See that seems
4 to be -- I mean, economically, I believe that's
5 correct. Legally, I don't know. So I don't know how
6 liability works in that type of situation.

7 Q That's fine, the lawyers can have
8 arguments about it. But as an economics matter,
9 what I said is correct?

10 A I believe economically what you said is
11 correct.

12 Q And maybe one way you could show that
13 economically is to go to the DFA balances and change
14 the numbers to reflect that the balances in the DFA
15 funds went to zero after March 31 of 2020; correct?

16 A I believe that's correct.

17 MR. BLUMENFELD: Why don't we close this
18 one first. How do I stop sharing?

19 Sam, could you upload as Exhibit 4 the
20 backup materials regarding the Freedom Funds?

21 THE VIDEOGRAPHER: I believe at the
22 bottom, counsel, it says stop sharing.

23 MR. BLUMENFELD: That's what I would have
24 thought, too, but mine just says share.

25 THE VIDEOGRAPHER: Or above in the green

1 bar.

2 MR. BLUMENFELD: Dr. Werner, Exhibit 4
3 should be there, too.

4 (Whereupon, Exhibit 4 was marked for
5 identification.)

6 BY MR. BLUMENFELD:

7 Q I'm going to share my screen again, be
8 patient with me. Did that work again?

9 A Yes, I believe so.

10 Q Okay. These are your calculations that
11 are reflected in Exhibits 3 through 8 of your
12 report; correct?

13 A That's correct.

14 Q And Deposition Exhibit 4 is the actual
15 calculations, the printout is what you included in
16 the report as a PDF?

17 A That's correct.

18 Q Exhibit 3 shows the balances in the
19 Fidelity Freedom target-date funds; correct?

20 A That's correct.

21 Q Exhibit 4 shows quarterly returns for the
22 Fidelity Freedom Funds target-date funds?

23 A That's correct.

24 Q What is Exhibit 5?

25 A It's a calculation of quarterly cash flow.

1 Q What does that mean?

2 A So it would be the net inflows or outflows
3 within each fund adjusting for the return over that
4 period.

5 Q This is a formula that's calculated, it's
6 not underlying data that was either provided to you
7 or collected by you?

8 A That's correct.

9 Q Exhibit 6 is the performance of the
10 American Funds target-date funds?

11 A Correct.

12 Q Okay. This is data that was collected by
13 you; correct?

14 A Right. This was from Morningstar.

15 Q Exhibit 7 reflects calculations that you
16 and your team made?

17 A Correct.

18 Q And Exhibit 8 is a calculation of the
19 losses that you calculate; correct?

20 A That's correct.

21 Q And Exhibit 8 is the difference between
22 the assets that the plan would have in the American
23 Funds as compared to the assets that the plan
24 actually had in the Fidelity Freedom target-date
25 funds?

1 A I believe that is correct.

2 Q Okay. Exhibit 3, just so I'm clear for
3 the record, this is Exhibit 3 to Exhibit 4 to your
4 deposition, is the assets in the Fidelity Freedom
5 target-date funds on a quarterly basis; correct?

6 A Correct.

7 Q And the methodology here is the same
8 methodology you used for the American Beacon and DFA
9 funds, it's just here you have a suite of funds, not
10 just a single fund, then you aggregated it; correct?

11 A We're looking at Exhibit 3; right?

12 Q Yes.

13 A I believe that's correct.

14 Q Before we dig in further on this,
15 Dr. Werner, I want you to assume that the Fidelity
16 Freedom Funds that were in the plan paid revenue
17 sharing and the American --

18 MR. TANG: Objection.

19 THE WITNESS: When you say "paid revenue
20 sharing," what do you mean?

21 BY MR. BLUMENFELD:

22 Q Do you understand what revenue sharing is?

23 A A sharing of revenue. But in this context,
24 I'm not sure what you're --

25 Q Sorry, I did not mean to cut you off. Go

1 ahead, Dr. Werner.

2 A No, no, no, you're fine.

3 Q Do you have an understanding as to what
4 revenue sharing is in the context of mutual funds?

5 A Beyond the idea that the revenue would be
6 shared, I mean, are you talking about cash outflows?
7 I'm not quite sure what you mean.

8 Q Okay. That's fine. You can say you're
9 not familiar with the concept of revenue sharing in
10 the circumstance of mutual funds, that's fine.

11 A All right. But that's -- I know it's okay
12 to say that. That's not what I'm saying. I'm trying
13 to understand what you mean by revenue sharing.

14 Q Have you ever heard of mutual funds
15 engaging in a practice called revenue sharing?

16 A I don't believe so.

17 Q Okay. Revenue sharing as I'm describing
18 it is where the mutual fund company, here Fidelity,
19 is willing to share some revenue back with the plan,
20 the Quanta plan, to cover administrative expenses
21 that the plan has to pay or to give back to plan
22 participants.

23 Do you understand what I'm saying to you
24 now?

25 A I believe so.

1 Q Okay. And so if the plan received revenue
2 sharing from the Fidelity Freedom Funds but did not
3 receive revenue sharing from the American Funds
4 target-date funds, you would have to account for
5 that in your calculations; correct?

6 A If that were the case, yes, I would need to
7 account for that in my calculations.

8 Q Okay. You did not account for that in
9 your calculations; correct?

10 A Well, I think that's why we add in the net
11 cash flow. So the calculations from -- sorry, I'm
12 trying to -- so the calculations from Exhibit 5.

13 Q But the calculations in Exhibit 5 are new
14 monies that people are moving in or out of the
15 investment options of the participants; correct?

16 A Right, I have no -- but I mean as you've
17 defined revenue sharing, that sounds like that would
18 be included.

19 Q Do you know if that's included?

20 A I do not.

21 Q Okay. And if I told you that the plan
22 received 20 basis points in revenue sharing on the
23 Fidelity Freedom Funds, do you factor in 20 basis
24 points in your calculations anywhere?

25 A I believe that's part of the return

1 calculation. But I could be wrong.

2 Q Did you investigate that?

3 A I did not.

4 Q And if the revenue sharing wasn't included
5 in the returns but was separate money that went back
6 to the plan, you would not be accounting for it in
7 your calculations; correct?

8 A And to the extent it's not in those cash
9 outflows or those net cash flows?

10 Q Correct.

11 A I believe that would be correct.

12 Q Okay. Dr. Werner, if the plan had decided
13 to replace the Fidelity Freedom Funds with the
14 Vanguard target-date funds on January 1 of 2017,
15 would you agree with me that there would be no
16 losses associated with the Fidelity Freedom Funds in
17 that circumstance?

18 A So in your hypothetical, what is happening?

19 Q The Fidelity Freedom Funds --

20 A Right.

21 Q -- are replaced with the Vanguard
22 target-date funds on January 1 of 2017.

23 A Okay. So that's your hypothetical, then
24 what?

25 Q In that circumstance, your calculations

1 would show no damages associated with the Fidelity
2 Freedom Funds?

3 MR. TANG: Calls for a legal conclusion.

4 THE WITNESS: I don't -- I don't quite
5 understand your hypothetical. I need -- I just
6 don't understand your hypothetical.

7 BY MR. BLUMENFELD:

8 Q Okay. Let me try and be clear.

9 You are asked to assume and calculate
10 losses associated with the Freedom Funds compared to
11 the American Funds target-date funds; correct?

12 A Correct.

13 Q And your starting date for your
14 calculations was January 1 of 2017?

15 A I believe that's correct.

16 Q And so what I was asking you is: If as of
17 January 1 of 2017 the Fidelity Freedom Funds were no
18 longer in the plan, because they were replaced with
19 the Vanguard target-date funds, then there wouldn't
20 be any losses associated with the Fidelity Freedom
21 Funds under your methodology?

22 A Again, I believe it's an incomplete
23 hypothetical. I don't understand the question.

24 Q Let me ask the question this way: What do
25 you calculate the losses to be as of January 1 of

1 2017?

2 A Let's go to -- for the income fund? Which
3 income fund are you talking about?

4 Q All of them. So -- by the way,
5 Dr. Werner, can you see my screen on Exhibit 8?

6 A Hold on. Yes, I can.

7 Q Okay.

8 A I'm sorry, what was your question?

9 Q As of January 1 of 2016, you would
10 calculate no losses associated with the Fidelity
11 Freedom Funds?

12 MR. TANG: Objection, form.

13 THE WITNESS: That's not actually anything
14 I've thought about. So as of January 1st, 2016 --
15 I'm sorry, 2017?

16 BY MR. BLUMENFELD:

17 Q Yes.

18 A Sorry, I'm just looking at my report here.

19 Q Sure.

20 A I think I understand. Can you ask your
21 hypothetical one more time -- actually, at this point
22 it's not a hypothetical. So what is the question?

23 Q As of January 1 of 2017, you calculate no
24 losses associated with the Fidelity Freedom Funds;
25 correct?

1 A I believe that's correct.

2 Q And to be sure, we could mathematically
3 say, let's sum up the losses that you calculate in
4 each of the different vintages; right? Because it's
5 a live spreadsheet, we can do that work?

6 A Correct.

7 Q So never want to do a spreadsheet
8 calculation on camera and live.

9 But if you do that as of December 31 of
10 2016 at least, you get zero; correct?

11 A That's correct.

12 Q Okay. And you're comfortable with the
13 formula that I utilized to calculate that; right?

14 A I am.

15 Q Okay. If the plan did not have the
16 Fidelity Freedom Funds after December 31 of 2016,
17 then there would be no losses associated with the
18 Fidelity Freedom Funds?

19 A That's -- so you're asking me to assume that
20 there were no Fidelity Freedom Funds as of
21 January 1st, 2017?

22 Q Right.

23 A Under that assumption, I need to think more
24 about that, I don't -- that sounds like that there's
25 probably some legal -- that that's -- that probably

1 has to do with the law in addition to being an
2 economic matter.

3 Another way of putting it, it's not an
4 economic matter, it's not strictly an economic
5 matter. I think that there's probably some theory
6 of liability that I am not aware of as I sit here
7 today.

8 Q As an economics matter, you would agree
9 that the damages would be zero?

10 A It appears to be, yes, that's an economic --
11 that's what you calculated here, that's what your
12 zero, zero, zero -- your summation across Line 7 of
13 the spreadsheet.

14 Q Well, let's be clear, I'm doing the same
15 methodology on Line 7 that you did to calculate the
16 total as of June 30th, 2024; correct?

17 A That's correct.

18 Q Okay. And so let's copy this formula to
19 the next quarter.

20 As of March 31 of 2017, you calculate --
21 you calculate, using your methodology, that the
22 damages would have been negative \$714,717.39;
23 correct?

24 A That's correct.

25 Q And so if after that date the Fidelity

1 Freedom Funds were no longer in the plan, your
2 damages methodology would show negative \$714,717.39?

3 A Again, so I believe it's an incomplete
4 hypothetical. I don't -- so you want me to assume,
5 again, that the funds are not available as of what
6 date?

7 Q The day after the calculations, so here as
8 of April 1 of 2017.

9 A Okay. The Freedom Funds are not available?

10 Q Correct.

11 A I don't know exactly how damages would work
12 in that scenario.

13 Q Okay. You don't have an economics opinion
14 on the subject?

15 A Oh, again, I don't think it's strictly a
16 question of economics.

17 Q You're the one who came up with this
18 spreadsheet; correct?

19 A That's correct.

20 Q And you calculate, using your methodology,
21 that as of March 31 of 2017, the damages would be
22 negative \$714,717.39?

23 A That's correct.

24 Q If we copy that same formula again to the
25 next quarter -- and I'll put commas in it so it's a

1 little bit easier to see -- as of the next quarter,
2 as of June 30, 2017, the damages would be negative
3 \$2,036,579.01; correct?

4 A Under your hypothetical, and given the other
5 caveats I've said, I believe that would be correct.

6 Q Just to be clear, this is not a
7 hypothetical, if you were asked what were the losses
8 as of March -- excuse me, June 30th, 2017, you would
9 have said negative \$2,036,579.01?

10 A Well, there is a couple of things there. I
11 would say economically that that is true. But in
12 your -- what you're asking me, though, is to assume
13 that this fund no longer exists or it's -- so again,
14 that is an assumption you asked me to make.

15 Again, I have not thought enough about it
16 to say that that's exactly -- from both a combined
17 legal and economic perspective, that those would be
18 damages.

19 Q Okay.

20 A As a simple calculation, your calculation is
21 correct.

22 Q Okay. And my calculation would be correct
23 as of June 30, 2017 regardless of whether the
24 Fidelity Freedom Funds remained in the plan after
25 that date; correct? In other words --

1 A I don't know how to answer that.

2 Q If you're asked to calculate what the
3 losses were to the plan as of June 30 of 2017, you
4 would give this answer, right, negative
5 \$2,036,579.01?

6 A As an economic matter, I believe that's
7 correct.

8 Q As of -- Dr. Werner, are you checking on
9 the formula again?

10 A Yes, I mean, I would give the same answer I
11 just gave about the previous cell we were looking at.

12 Q If you were asked to calculate the losses
13 as of September 30th of 2017, you would say negative
14 \$2,256,824.62?

15 A Again, as an economic matter, I believe
16 that's correct.

17 Q Okay.

18 A I mean, your calculation is correct.

19 Q Let's switch gears and look at Exhibit 4
20 to Exhibit 4, which is the returns on the Fidelity
21 Freedom Funds that you use in your calculations.

22 A Okay.

23 Q Did I describe what those numbers are
24 supposed to reflect correctly?

25 A I'm sorry, I was switching back and forth

1 between my spreadsheet and your spreadsheet.

2 What was your description of this?

3 Q Exhibit 4 to Exhibit 4 is the quarterly
4 returns of the Fidelity Freedom Funds?

5 A That's correct.

6 Q Okay. Do you know where these numbers
7 came from?

8 A I believe if you look at the bottom of
9 Exhibit 4, they came from the documents cited in the
10 notes.

11 Q These are documents you hadn't seen before
12 today; correct?

13 A Which documents?

14 Q The documents you cite in the notes?

15 A That's correct. I mean, I may have, but as
16 I sit here today, I don't recall.

17 Q I'll show it to you if we need to, but if
18 you look in your report, Paragraph 9 --

19 A Slow down.

20 Q Yes. I apologize.

21 A I don't have all of these things in front of
22 me.

23 Q That's fine, let's go back to your report.
24 On Paragraph 9?

25 A Yes.

1 Q Do you have that in front of you?

2 A I do.

3 Q In Paragraph 10, you say that you obtained
4 quarterly return data for each of the Fidelity
5 Freedom TDF Vintages from the same set of documents
6 from which you obtained quarterly balances; correct?

7 A That's correct.

8 Q When you look at the PDF of Exhibit 4 as
9 you produced it attached to your report, the
10 returns --

11 A I'm sorry, no. So you want me to look at --
12 am I looking at my report right now or am I looking at
13 the spreadsheet?

14 Q Go to your report first, please.

15 A Okay.

16 I'm there. I've read Paragraph 9.

17 Q And you read Paragraph 10?

18 A Not in its entirety.

19 Okay. I've now read both of those
20 paragraphs.

21 Q Now, if you go to Exhibit 4 to your
22 report.

23 A Exhibit 4 to my report, okay.

24 Q The actual PDF.

25 A Right.

1 Q You see all of the return percentages?

2 A I do.

3 Q They are all to two decimal places;
4 correct?

5 A Well, no.

6 Q Are you looking at the Excel file or are
7 you looking at the PDF?

8 A Oh, I'm sorry. So now we're looking -- I'm
9 not looking at the exhibit that you're sharing with me
10 that's taking up the entire page. You want me to look
11 at the PDF. So basically look at my report and then
12 go to Exhibit 4 in the PDF format; is that what you're
13 asking me to do?

14 Q That's what I said, yes.

15 A I may argue with you -- I'm not going to
16 argue with you. I'm not sure that's what you said,
17 but okay. So now I'm in Exhibit 4 -- okay. Go ahead,
18 what is the question?

19 Q All of the percentage returns there are
20 listed to two decimal places?

21 A That's correct.

22 Q Okay. Now, if you switch gears to the
23 backup. It is Exhibit 4 to your deposition.

24 A Okay. Exhibit 4 to my deposition, okay.
25 I'm there.

1 Q The Excel file tab "Exhibit 4"?

2 A Correct.

3 Q That's the one that I am sharing on my
4 screen.

5 A Right.

6 Q You see that the returns show up as being
7 to two decimal places but when you click on them,
8 it's actually to about five or six decimal places?

9 A That's correct.

10 Q Do you have any idea where that
11 information came from?

12 A The information -- again, I would refer you
13 to the notes in this exhibit.

14 Q Okay.

15 A Or at the bottom of this Excel page.

16 Q Excuse me.

17 MR. BLUMENFELD: Sam, let's mark the
18 Q42017 QIR.

19 MR. BLOCK: I'll let you know when it's
20 up.

21 MR. BLUMENFELD: Thank you.

22 THE WITNESS: How much longer are we going
23 to go? I mean if you have no idea, then I would say
24 maybe we want to take a lunch break now.

25 MR. BLUMENFELD: Why don't we finish these

1 questions and then we can take a lunch break.

2 THE WITNESS: I'm starting to get
3 lightheaded. I would really like to take the lunch
4 break now if we're going on for a while.

5 MR. BLUMENFELD: Okay. How much time do
6 you need, Dr. Werner?

7 THE WITNESS: How about a half an hour?

8 (Whereupon, Exhibit 5 was marked for
9 identification.)

10 THE VIDEOGRAPHER: Going off the record.
11 This marks the end of Media Number 4. Going off the
12 record at 12:38 p.m. Pacific.

13 (Recess taken.)

14 THE VIDEOGRAPHER: We're back on the
15 record at 1:13 p.m. Pacific. This marks the 0
16 beginning of Media Number 5 in the deposition of
17 Dr. Adam Werner.

18 Please proceed, counsel.

19 MR. BLUMENFELD: Thank you.

20 Q Dr. Werner, you understand you're still
21 under oath?

22 A I do.

23 Q And you understand you have the same
24 obligation to tell the truth as if you were
25 testifying live in front of a judge or jury?

1 A I do.

2 Q Did you get a chance to eat something
3 during the break?

4 A I did. Thank you.

5 (Discussion off the record.)

6 BY MR. BLUMENFELD:

7 Q Dr. Werner, did you talk to anybody about
8 your testimony during the lunch break?

9 A Did I talk to anyone about my testimony? I
10 talked with Alexander Huang. I talked briefly with
11 counsel.

12 Q What was the conversation with Mr. Huang?

13 A That I was surprised that this was going so
14 long.

15 Q Anything else?

16 A That was it.

17 Q Could you go back to Paragraph 10 of your
18 report, Dr. Werner.

19 A Okay.

20 Q Let me know when you have that in front of
21 you.

22 A I'm there.

23 Q Okay. You say in the first sentence of
24 Paragraph 10 that you "obtained the quarterly return
25 data for each of the Fidelity Freedom TDF Vintages

1 from the same set of documents from which I obtained
2 quarterly balances." Correct?

3 A That's correct.

4 Q Okay. And you said earlier you did not
5 personally do that, but somebody on your team got
6 the returns data; correct?

7 A That's correct.

8 Q Okay. Now, I think, Dr. Werner, that
9 Paragraph 10, that sentence is untrue. I don't
10 think you got the returns data that you used in your
11 calculations from the material that were provided in
12 this case that you list as your documents
13 considered.

14 And what I was trying to get at before the
15 break was that you have too many decimal places in
16 your calculations.

17 A Okay.

18 Q So let's go to Exhibit 5 to your
19 deposition.

20 A Is that something that we already -- is that
21 new or is that --

22 Q It was introduced at the very last minute
23 before you asked for a lunch break.

24 A Okay. Hold on.

25 Okay.

1 Q Do you have that document?

2 A I do.

3 Q Okay. This is the quarterly investment
4 review for the plan for the time period ending
5 December 31, 2017.

6 Do you see that?

7 A I do.

8 Q Okay. If you page to Page 37 of 114 of
9 the PDF.

10 A Page 37?

11 Q Yes.

12 A Okay.

13 Q You see on here, among other things, the
14 target-date 2020 Fidelity Freedom 2020 K Fund.

15 Do you see that?

16 A I do.

17 Q Okay. And the ticker symbol for that fund
18 is listed right next to that; correct?

19 A Correct.

20 Q What is that ticker?

21 A If I'm reading this correctly, F as in
22 Frank, S as in Sam, N as in Nancy, O as in orange, X
23 as in xylophone.

24 Q And if you look at the assets that are
25 listed there, it's \$71,251,182; correct?

1 A That's correct.

2 Q Okay. Now, bear with me, if you go to
3 your spreadsheet.

4 A Okay.

5 Q Exhibit 4.

6 A Exhibit 4.

7 Q We're in the backup materials.

8 A Right.

9 Q It's Exhibit 3 within Exhibit 4.

10 A Okay.

11 Q Do you have that?

12 A I do.

13 Q Okay. And you can look and see the same
14 2020 fund as of December 31, 2017 has assets of
15 \$71,251,182; correct?

16 A I can see that, yes.

17 Q That matches what's in the QIR, the
18 quarterly --

19 A I'm sorry, are we looking at the spreadsheet
20 or are we looking at the PDF of my report?

21 Q Spreadsheet.

22 A So, yes, there's more decimal places and I'm
23 actually -- I'm happy to issue a corrected report.

24 But obviously this -- I shouldn't say obviously
25 because I guess it's not obvious. This data came from

1 Morningstar, was then checked against these exhibits.

2 So that's why there's the discrepancy
3 between the number of digits in my exhibits versus
4 the number of digits in the Excel exhibits I turned
5 over. So what was the term you used? It wasn't
6 dishonest -- untruthful. Untruthful.

7 It was an oversight. I'm more than happy
8 to submit a corrected version.

9 I can tell you, though, that each one of
10 these numbers from -- that was taken from
11 Morningstar were checked against the exhibit in
12 question. And so if that's what we've been spending
13 this time doing, I apologize that I've wasted a half
14 an hour of your time because I was somewhat
15 inarticulate.

16 Q Well, so let's go back to Paragraph 10 in
17 the text of your report.

18 A Yes.

19 Q That first sentence is not correct?

20 A I believe that that needs to be fixed, yes.

21 Q Okay.

22 A I defer to my counsel. Do you want me to
23 submit an entirely new report instead of exhibits?

24 Q That's something that you'll discuss with
25 your counsel. All I'm doing is asking the questions

1 based on the data and the report that you provided.

2 So Exhibit 3, which is part of your backup
3 spreadsheet --

4 A I'm sorry, Exhibit 3 to what?

5 Q Exhibit 3 deposition, Exhibit 4. Let's go
6 to the live Excel spreadsheet.

7 A Are you sharing it with us or no?

8 Q Do you want me to share my screen again?

9 A I don't need you to do it, I just need a
10 more accurate description of exactly what I'm supposed
11 to be looking at.

12 Q Let's do that to make sure that it's
13 accurate.

14 A Okay. I have the spreadsheet in front of me
15 now.

16 Q Okay. The spreadsheet, which is Exhibit 4
17 to your deposition, has an Exhibit 3 tab to it; yes?

18 A Correct, yes.

19 Q That Exhibit 3 tab has the assets in the
20 plan in the Fidelity Freedom target-date funds;
21 correct?

22 A It has the balances.

23 Q The balances in the Fidelity Freedom
24 target-date funds?

25 A Correct.

1 Q And the title of that is "Exhibit 3,
2 Fidelity Freedom TDFs - Quarterly Balances (in
3 Dollars)"; yes?

4 A That's correct.

5 Q Switching to the next tab, which is
6 Exhibit 4 to Exhibit 4, this is the backup worksheet
7 returns data.

8 This is supposed to represent the Fidelity
9 Freedom target-date funds quarterly returns each
10 quarter; correct?

11 A Correct.

12 Q Dr. Werner, when you said that the data in
13 Exhibit 4 was checked against the quarterly
14 investment reviews, did you do that or did somebody
15 else do that?

16 A I did not do that. Someone else did. I
17 don't know how many other people did that. My guess
18 is at least two.

19 Q Are you sure that anybody did it?

20 A I'm positive. Which is -- we'll leave it at
21 that.

22 Q Did you have something you wanted to say,
23 Dr. Werner?

24 A I'm trying to look at the footnote here.
25 Oh, yes. So maybe I should have highlighted this

1 more.

2 I'm looking at Footnote 3 to my report,
3 which is Exhibit 1 to this deposition. "The
4 differences between the Morningstar Direct quarterly
5 return data and the quarterly return data obtained
6 from Quanta's documents is de minimis. The average
7 difference was less than a single basis point across
8 the Fidelity Freedom TDFs during the quarters where
9 both data series were available."

10 So hopefully that also gives you a little
11 more clarification about whether or not this data
12 was checked.

13 Q Who wrote that footnote?

14 A It was -- I believe it was written by Alex
15 Huang at my direction under my supervision.

16 Q Let's go back to Exhibit 8 to Exhibit 4,
17 which is the spreadsheet.

18 A Okay.

19 Q This is the live backup spreadsheet
20 showing your work that led to the numbers that are
21 reflected in your report; correct?

22 A I believe that's correct.

23 Q Okay. I want to go down to March 31 of
24 2021 and June 30 of 2021.

25 Are you following where I'm looking?

1 A I am.

2 Q Okay. And you will see that I copied the
3 same total losses formula down for these two rows;
4 correct?

5 A That's what did you, correct.

6 Q And you are comfortable that the formulas
7 worked the way they are supposed to and are written
8 the way --

9 A Well, I suppose I can do it on my exhibits
10 as well if there's any doubt.

11 Okay.

12 Q Can you confirm that my numbers are
13 correct?

14 A Right. You just left out all the numbers
15 that are positive. Oh, there's one negative number
16 you haven't included, at least one. But by all means,
17 go ahead.

18 Q Sure.

19 As of March 31st of 2021, your damages
20 methodology yields negative damages of 4.233 --
21 excuse me. Let me restate that.

22 As of March 31st of 2021, your damages
23 methodology yields damages of negative
24 \$4,233,995.89; correct?

25 A As an economic matter, I believe that that

1 calculation is correct.

2 Q Okay. And then as of June 30th, 2021,
3 your calculation methodology yields damages of
4 negative \$7,062,855.17?

5 A As an economic calculation, that does sum --
6 represent the sum of Line 25 or I guess what's labeled
7 Row 19.

8 Q Okay. Meaning that as of those two dates,
9 the plan was better off in the Fidelity Freedom
10 Funds than the American Funds by \$4.2 million as of
11 March 31st of 2021 and by \$7 million as of
12 June 30th, 2021; correct?

13 A No, I don't know that for sure. I mean,
14 I've just been -- I've just done this today. I would
15 need to think about it more with regards to the exact
16 answer to your question before I stated that
17 definitively.

18 Q You calculate damages as of June 30 of
19 2024 of \$20,139,166; correct?

20 A That's correct.

21 Q And you used the same formula that I used?

22 A Let's see. Well, I don't think that's
23 actually accurate.

24 Q Well, the cell is P39; correct?

25 A That's correct.

1 Q Okay. And cell P39 says you sum up C37 to
2 P37?

3 A That's correct.

4 Q Okay. And what I did is sum up all of the
5 cells, C to P, for different rows because it's a
6 different time period?

7 A That's correct.

8 Q Okay. But otherwise, it's the same exact
9 calculation that you did?

10 A I believe mathematically that's correct.

11 MR. BLUMENFELD: Sam, can we do the -- I'm
12 trying to stop sharing.

13 Q Am I still sharing my screen, Dr. Werner?

14 A No, I don't believe so.

15 MR. BLUMENFELD: Sam, can we do the Q12021
16 QIR?

17 THE WITNESS: Is this Exhibit 6 or 5?

18 MR. BLUMENFELD: This will be 6.

19 THE WITNESS: Okay, I haven't received it
20 yet.

21 MR. BLOCK: It's not up yet, but it's
22 uploading.

23 THE WITNESS: That probably explains it.

24 MR. BLOCK: It should be available now.

25 (Whereupon, Exhibit 6 was marked for

1 identification.)

2 THE WITNESS: Okay. I see it now.

3 MR. BLUMENFELD: Great.

4 THE WITNESS: I've got it open.

5 BY MR. BLUMENFELD:

6 Q Could you turn to Page 19 of 40?

7 A Nineteen of 40? The asset allocation?

8 Q Yes.

9 A Okay.

10 Q Specifically look for the Fidelity Freedom
11 2020 K fund.

12 A Okay.

13 Q It's \$75,692,121; correct?

14 A That's what it says, yes.

15 Q And if we go back to your worksheet, the
16 actual Excel spreadsheet which is Exhibit 4 to your
17 deposition.

18 A Okay.

19 Q Let me know when you're there.

20 A Okay. I'm there.

21 Q Okay. Can you go to the tab that is
22 marked Exhibit 3?

23 A I can.

24 Q Have you done that?

25 A Yes, I'm there.

1 Q If you look at the 2020 fund as of
2 March 31 of 2021, do you see that same number in
3 your calculations, \$75,692,121; correct?

4 A Correct.

5 Q And if I could indulge you to go back to
6 Exhibit 6.

7 A Okay.

8 Q Give me a second, sorry. We can be done
9 with that exhibit.

10 MR. BLUMENFELD: Sam, could we upload the
11 next QIR?

12 MR. BLOCK: It should be up now.

13 (Whereupon, Exhibit 7 was marked for
14 identification.)

15 BY MR. BLUMENFELD:

16 Q Can you turn to Page 19 of 40.

17 A Okay. I'm there.

18 Q And for the Fidelity Freedom Funds, you
19 see that they are not listed; correct?

20 A They don't appear to be.

21 Q Dr. Werner, did you know before today that
22 the Fidelity Freedom Funds had been removed from the
23 plan between March of 2021 and June of 2021?

24 A Are you stipulating that that happened?

25 Q Did you know?

1 A I still don't know.

2 Q I'm telling you it happened. Did you know
3 that it happened?

4 A Not that -- I'll take you at your word. I
5 don't believe that I knew that.

6 MR. BLUMENFELD: Okay. Let's take a break
7 for about five minutes. I might be just about done.

8 THE VIDEOGRAPHER: Okay. Stand by,
9 everyone.

10 MR. BLUMENFELD: Sorry.

11 THE VIDEOGRAPHER: Go off the record,
12 counsel?

13 MR. BLUMENFELD: Yes, please, but then
14 stay on for just one more minute.

15 THE VIDEOGRAPHER: Thank you.

16 This marks the end of Media Number 5.
17 Going off the record at 1:39 p.m. Pacific.

18 (Recess taken.)

19 THE VIDEOGRAPHER: We're back on the
20 record at 1:53 p.m. Pacific. This marks the 0
21 beginning of Media Number 6 in the deposition of
22 Dr. Adam Werner.

23 Please proceed, counsel.

24 MR. BLUMENFELD: Thank you very much for
25 your time, Dr. Werner. I don't have any further

1 questions.

2 THE VIDEOGRAPHER: Is there anything else
3 from counsel or the court reporter before I conclude
4 the record?

5 THE REPORTER: Jeremy, you have a standing
6 order. Kolin, what do you need?

7 MR. TANG: Let's get a rough, please.

8 THE VIDEOGRAPHER: I'm going to conclude.

9 This concludes today's deposition of
10 Dr. Adam Werner. Total number of media used is six.

11 Going off the record at 1:54 p.m. Pacific
12 Daylight Time.

13 (Proceedings concluded at 1:54 p.m.)
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1 I, LYNNE M. LEDANOIS, a Certified
2 Shorthand Reporter of the State of California, do
3 hereby certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that a record of the proceedings was made by me
7 using machine shorthand which was thereafter
8 transcribed under my direction; that the foregoing
9 transcript is a true record of the testimony given.

10 Further, that if the foregoing pertains to
11 the original transcript of a deposition in a Federal
12 Case, before completion of the proceedings, review
13 of the transcript ☐ was ☒ wasn't requested.

14 I further certify I am neither financially
15 interested in the action nor a relative or employee
16 of any attorney or party to this action.

17 IN WITNESS WHEREOF, I have this date
18 subscribed my name.

19
20 Dated: September 10, 2024
21
22

23 
24

LYNNE MARIE LEDANOIS

25 CSR No. 6811

1 NAME OF CASE: Mary Laliberte vs Quanta

2 DATE OF DEPOSITION: 9/9/24

3 NAME OF WITNESS: Adam Werner

4 Reason codes:

5 1. To clarify the record.

2. To conform to the facts.

6 3. To correct transcription errors.

7 Page ____ Line ____ Reason____

From _____ to_____

8

9 Page ____ Line ____ Reason____

From _____ to_____

10

11 Page ____ Line ____ Reason____

From _____ to_____

12

13 Page ____ Line ____ Reason____

From _____ to_____

14

15 Page ____ Line ____ Reason____

From _____ to_____

16

17 Page ____ Line ____ Reason____

From _____ to_____

18

19 Page ____ Line ____ Reason____

From _____ to_____

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Signature of Deponent

[& - 2021]

Page 1

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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